United States Court of Appeals

for the Second Circuit

APPENDIX

14 Denies the allegations contained in paragra

75-7008

United States Court of Appeals

For the Second Circuit.

Docket No. 75-7003

B

STUART A. JACKSON,

Plaintiff-Appellant,

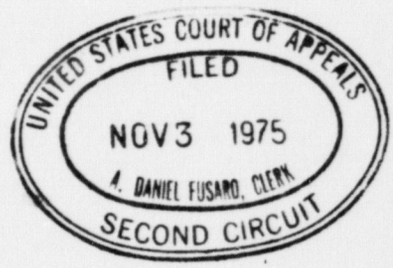
v.

JACK OPPENHEIM,

Defendant-Appellee.

P/S

Appeal from Judgment of the United States District Court for the Southern District of New York



JOINT APPENDIX

GLASS, GREENBURG, IRWIN & PELLMAN
Attorneys for Plaintiff-Appellant
540 Madison Avenue
New York, N. Y. 10022
(212) 338-6670

CURTIS, MALLET-PREVOST, COLT and MOSLE, Esqs.
Attorneys for Defendant-Appellee
100 Wall Street
New York, N. Y. 10005
(212) 248-8111

4

Charles Vergels registration statement dated July 29, 1969;

PAGINATION AS IN ORIGINAL COPY

AGAINST PLAINTIFF

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UNITED STATES COURT OF APPEALS

For the Second Circuit.

Docket No. 75-7008

STUART A. JACKSON,

Plaintiff-Appellant,

versus

JACK OPPENHEIM,

Defendant-Appellee.

APPEAL FROM JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

Docket Entries.

STUART A. JACKSON VS. JACK OPPENHEIM

71 CIV. 1205

JUDGE TENNEY

DATE	PROCEEDINGS	Date Order or Judgment Note
r16-71	Filed Complaint. Issued Summons.	
r.16-71	Filed Order appointing Sigmund Katz to serve summons and complaint. Clerk.	
.17-71	Filed summons with affidavit of service. Served defendant by Attys. for said deft. on 3/16/71.	
.26-71	Filed Notice of Motion re: Consolidate. Ret. 3/30/71. (Filed in 70 Civil 4175)	
.26-71	Filed Memorandum in support of pltfs'.motions to consolidate, for a pre.inj. and to dismiss deft's.counterclaims. (Filed in 70 Civil 4175)	
.29-71	Filed Order to Show Cause re: Summary Judgment. Ret. 3/30/71.	CMPC&M
.29-71	Filed Deft.Oppenheim's Memorandum in support of Oppenheim's motion for summary judgment in both cases, and in opposition to pltfs'.motions to consolidate,etc. (Also in 70 Civil 4175).	"
.29-71	Filed OPINION #37533 Cooper, J. This motion for preliminary injunction by Stuart A.Jackson (71 Civ. 1205) and Richard C.Maybruck (70 Civ.4175) is in each case denied. So ordered. (mailed notice) (Filedn 70 Civ. 4175).	
6-71	Filed Affidavit of Stuart A. Jackson in support of his motions.(Filed in 70 Civ. 4175).	
.16-71	Filed Memorandum of Law in opposition to deft's.motion for summary judgment.	
.16-71	Filed Supplemental Memorandum of Law in support of deft's.motion. (Filed in 70 Civ. 4175)	
.26-71	Filed OPINION #37551. Cooper, J. Motion to consolidate granted. Pltf.Maybruck's motion for summary judgment against Maybruck and Jackson denied as to each; in re: the motion for attorneys fees - we deny the motion to dismiss this counterclaim on the authority of 15 USC 77 K(e) SEC Act of 1933, Sec.11(e). Attorneys fees are discretionary withthe trial court.- The cases are to be brought to trial promptly. So ordered. (mailed notice).	
.19-71	Filed pltff's notice to take deposition of deft Jack Oppenhim.	
6-71	Filed Undertaking for costs on appeal. (250.00) National Surety Corp.	
.6-71	Filed Notice of Appeal by Stuart A. Jackson.(Mailed copy)	
.20-71	Filed Reply to counterclaims.	
.16-71	Filed transcript of Record of Proceedings of April 14, 1971. (Also in 70 Civ. 4175).	
r.20-72	Filed Defendant's Note of Issue and Statement of Readiness (Filed in 70 Civ. 4175)	
c- 7-73	Filed stip. and order substituting Attorney for Plaintiff. - (Tenney, J.)	
an-25-74	Filed defendants trial memorandum	
an-25-74	Filed plaintiffs pre-trial memorandum	
an-25-74	Filed defendants request to charge	
an-25-74	Filed consent pre-trial order - Cannella, J.	
ar.28-74	**Memorandum of Notice of Reassignment to TENNEY,J.(mn)**	
ep.10-74	Trial Begun before Tenney,J. with Non-Jury.	
ep.11-74	" Contd & concluded.Decision Reserved.	
.22-74	Filed Deft's Proposed Findings of Fact and Conclusions of Law.	
t.22-74	Filed Memorandum of Law in support of Deft's Proposed Conclusions of Law.	
-74	Filed transcript of record of proceedings, dated 9/10-11-12/74	
ov.21-74	Filed OPINION#41471.Court denies relief requested by pltff in count 1&count 2 of complaint and grants judgment to deft on counterclaim in amt of $33,852.00 ,etc.In addition,costs &fees granted to deft.Parties are to submit papers regarding determination of costs and fees within 10 days of entry of this judgment.So Ordered.Tenney,J.	
.18-74	Filed Pltff's Notice of Appeal from Order of Hon.Charles H.Tenney,denying relief requested by pltff in 1st&2nd counts of complaint and granting judgment to deft on counterclaim in amt of $33,852 plus interest on 11/21/74.(mailed notice to Curtis,Mallet-Prevost Colt&Mosle on 12/19/74.)	
.8-75	Filed Memorandum in support of Deft's claim for interest,costs&attys'fees.	
28-75	Filed pltff supplemental pre trial memo fo law.	
Jan 28 75	Filed pltff pre trial memo fo law.	
an 28 75	Filed pltffs findings of fact of conclusuions of law.	
an 23 75	Filed designation of exhibits to be tranferred to USCA.	
	Record on appeal has been certified and transmitted to USCA	

DATE	PROCEEDINGS
1/29/75	Filed Deft's Reply Memorandum in support of his claim for interest ,costs& attys fees.
10-07-75	Filed Affdvt of Leonard R.Class for pltff in opposition to deft.Jack Oppenheim's claim for legal fees&costs,etc.
10-07-75	Filed Pltff's Memorandum in opposition to deft's claims for interest,costs &fees.
10-07-75	Filed Affdvt of Peter Fleming Jr.for deft.Oppenheim in support of claim for legal fees&costse,etc.
10-07-75	Filed Deft's Notice of motion for order directing entry of Judgment on $33,852, principal awarded to deft&counter-claimant Oppenheim.on Court's decision of 11/27/75. .
10-07-75	Filed Affdvt of Leonard R.Class for pltff in opposition to motion of deft for an order for partial judgment .
10-07-75	Filed Deft.Affdvt&Notice of motion re:order directing entry of judgment on $33,852.f principal awarded to deft&counter-claimant Oppenheim by Court's decision of 11/27/75.
10-07-75	Filed Memo Endn.on motion of same date.Motion withdrawn on consent of counsel. Tenney,J.(mn)
10-07-75	Filed OPINION#43216.Deft's request for an award of reasonable attys'fees is granted in amt of $12,850.00.SUBMIT ORDER in conformity with this memorandum within 5 days of filing thereof.Tenney,J(mn)
10-17-75	Filed ORDER&JUDGMENT#75,926. Order that judgment be entered dismissing pltff's complaint on merits.Ordered that judgment be entered in favor of counter-claims against pltff in sum of $33,852,00,etc.Ordered that judgment be entered in favor of deft&against pltff in sum of $12,850.00 etc. Ordered that judgment be entered by Clk of Court against pltff to total of $20,360.74.Tenney,J.JUDGMENT ENTERED.Clk (mn) Ent.10/21/75

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

STUART A. JACKSON,

Plaintiff,

-against-

JACK OPPENHEIM,

Defendant.

- x

71 CIVIL

COMPLAINT

Plaintiff, by his attorneys, Royall, Koegel & Wells, for his complaint, alleges:

AS AND FOR A FIRST, SEPARATE AND DISTINCT CAUSE OF ACTION

1. This action is brought pursuant to Section 22 of the Securities Act of 1933, 15 U.S.C.A. § 77 v and Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78 aa, the rules and regulations issued thereunder and pursuant to this Court's pendent jurisdiction over state law claims presented.

2. Plaintiff has at all times relevant herein been a resident and citizen of Sands Point, New York, residing at Old House Lane (no number) in that village.

3. Chelsea House Educational Communications, Inc. ("Chelsea House") is a New York corporation, organized on November 3, 1966, and is engaged in the book publishing and audio-visual aids distributing business.

4. Plaintiff is the record and beneficial owner of at least 3,334 shares of Chelsea House Common stock.

5. Defendant Jack Oppenheim is a resident and citizen of New York, New York, residing at 241 Central Park West in that city.

6. Defendant actively participated in the business and financial operations of the Company on a daily basis, was a Vice-President of the Company and, up to and including April 10, 1970, was a director of Chelsea House.

7. Prior to April 10, 1970, defendant was the record and beneficial owner of 146,183 shares of common stock of Chelsea House.

8. By agreement dated April 7, 1970, executed on April 10, 1970, defendant agreed to sell all his 146,183 shares of common stock of Chelsea House to plaintiff and others. Specifically, plaintiff agreed to buy from defendant a total of 14,618 shares of stock of Chelsea House at $3 per share.

9. On April 10, 1970, plaintiff delivered to defendant a check in the amount of $10,000 and signed two promissory notes payable to the defendant, each in the amount of $16,926, which will become due on April 10, 1971 and April 10, 1972, respectively.

10. On April 10, 1970, defendant delivered to plaintiff 3,334 shares of common stock of Chelsea House, with the remaining 11,284 shares purchased by plaintiff to be held in escrow to secure payment of the notes.

11. Prior to April 10, 1970, defendant, by reason

of his position as a Vice-President and Director, had knowledge that Chelsea House was in a financial crisis, that it suffered from mismanagement, and that its liabilities far exceeded its assets.

12. The information described in paragraph 11 was intended to be available only for a corporate purpose of Chelsea House, and not for the personal benefit of defendant.

13. By reason of his position as an insider, defendant had a duty to refrain from trading in Chelsea House stock until the information described in paragraph 11 had been made known to the public, or to disclose such information to any person to whom he sold Chelsea House stock.

14. Defendant, in violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated pursuant thereto, and other applicable rules, regulations and statutes, for his own advantage and personal benefit, willfully failed to disclose the deteriorating financial condition of Chelsea House to plaintiff and others prior to the sale of his Chelsea House stock to them.

15. Plaintiff had no knowledge of the economic crisis facing Chelsea House prior to April 7, 1970, a fact known by defendant and plaintiff would not have acquired defendant's stock in April, 1970 if he had known the true financial condition of Chelsea House at that time.

16. In July, 1970, Chelsea House filed a petition in United States District Court for the Southern District of New York pursuant to Chapter XI of the Bankruptcy

Act, 11 U.S.C. § 701 et seq., in order to effect an arrangement of its unsecured debts.

17. The aforesaid omission to state material facts necessary to make the statements made, in the light of circumstances under which they were made, not misleading, in connection with the purchase and sale of stock, were acts, practices, or courses of business which operated as a fraud or deceit upon plaintiff.

18. All of the acts and conduct of the defendant herein alleged took place within the Southern District of New York.

AS AND FOR A SECOND, SEPARATE AND DISTINCT CAUSE OF ACTION

19. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 18 of his complaint with the same force and effect as if fully set forth at length herein.

20. Defendant, in violation of Section 12 of the Securities Act of 1933, and the rules and regulations promulgated pursuant thereto, offered to and did sell his Chelsea House stock to plaintiff and others, by the use of means or instruments of transportation or communication in interstate commerce and the mails, by means of certain oral communications that omitted to state material facts about the fast declining financial situation at Chelsea House which were necessary in order to make the statements, made by defendant, in light of the circumstances under which they were made, not misleading.

21. Plaintiff first discovered the true financial condition of Chelsea House in or about July 1970. Since this complaint was filed in this Court on March 16, 1970, the allegations stated in the second cause of action comply with Section 13 of the Securities Act of 1933.

WHEREFORE, plaintiff prays for judgment on his first and second causes of action

a. rescinding the agreement dated April 7, 1970 between defendant Oppenheim and plaintiff Stuart Jackson

b. ordering the return of all monies heretofore paid to defendant by plaintiff;

c. cancelling and rescinding the promissory notes given by plaintiff to defendant as consideration for the sale of Chelsea House stock; and

d. granting plaintiff such other and further relief as the Court may deem just in the circumstances.

ROYALL, KOEGEL & WELLS

By Norman S. Outerbridge
A Member of the Firm

Attorneys for Plaintiff
Office and P.O. Address
200 Park Avenue
New York, N.Y. 10017
Tel. No. (212) 972-7000

ANSWER AND COUNTER-CLAIMS TO COMPLAINT

OF STUART A. JACKSON

DEFENDANT DEMANDS
TRIAL BY JURY

Defendant, by his attorney, Curtis, Mallet-Prevost, Colt & Mosle, for his Answer and Counterclaims to the Complaint of Stuart A. Jackson, alleges:

1. Denies knowledge or information sufficient to form belief as to the truth of the allegations contained in paragraph 1 of the complaint, and leaves all questions of law for the determination of the Court.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint.

3. Admits upon information and belief the allegations contained in paragraphs 3 and 4 of the complaint.

4. Admits the allegations contained in paragraph 5 of the complaint.

5. Denies the allegations contained in paragraph 6 of the complaint, but admits that prior to March 6, 1970 defendant was a Vice President and Director of Chelsea House, at which time he resigned as Vice President.

6. Admits upon information and belief, the allegations contained in paragraph 7 of the complaint.

7. Denies the allegations contained in paragraph 8 of the complaint as pleaded, but admits that on April 7, 1970 defendant entered into an agreement with plaintiff

and with others whereby defendant agreed to sell all of his 146,183 shares of the common stock of Chelsea House at a price of $ 3.00 per share, and that by an amended agreement dated April 10, 1970 defendant agreed to sell all of such shares to plaintiff and others at $ 3.00 per share, and that plaintiff agreed to buy from defendant a total of 14,618 of said shares at $ 3.00 per share, and respectfully requests leave to refer to said agreements for their terms, contents, and conditions.

8. Admits upon information and belief the allegations contained in paragraph 9 of the complaint except alleges that plaintiff's agent delivered the check to defendant.

9. Admits the allegations contained in paragraph 10 of the complaint except alleges upon information and belief that defendant delivered the 3,334 shares of Chelsea House common stock to plaintiff's agent.

10. Denies the allegations contained in paragraph 11 of the complaint, except admits that prior to March 6, 1970 defendant was a Vice President and Director of Chelsea House.

11. Denies the allegations contained in paragraph 12 of the complaint, and leaves all questions of law for the determination of the Court.

12. Denies the allegations contained in paragraphs 13, 14 and 15 of the complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations con-

tained in paragraph 16 of the complaint.

14 Denies the allegations contained in paragraph 17 of the complaint.

15. Denies the allegations contained in paragraph 18 of the complaint, and specifically repeats, realleges, and reiterates the allegations contained in paragraphs 1 through 14 of this Answer, but admits that the Agreements described in paragraph 8 of this Answer were entered into within the Southern District of New York.

16. Defendant repeats, realleges and reiterates each and every allegation contained in paragraphs 1 through 15 of this Answer with the same force and effect as if fully set forth herein, with respect to par.19 of the complaint.

17. Denies the allegations contained in paragraphs 20 and 21 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE COMPLAINT.

18. Plaintiff is estopped from asserting the claims alleged in the complaint by reason of the knowledge, conduct, statements, and actions of said plaintiff, his agents and representatives.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE COMPLAINT.

19. At all material times plaintiff Jackson was and still is an officer and director of Chelsea House and was and still is General Counsel to Chelsea House. As a member of the firm of Royall, Koegel and Wells, plaintiff's attorneys, Jackson was in charge of

and principally responsible for the preparation of Chelsea House's registration statement dated July 29, 1969, and all subsequent modifications thereof.

20. By virtue of his above capacities Jackson was aware of or should have been aware of and was privy to the details of Chelsea House's operations and to the various audited financial statements of Chelsea House, and was a participant in and privy to various of the negotiations with prospective underwriters for a proposed Chelsea House public issue in 1970.

21. By reason of plaintiff's aforesaid status and position, including his knowledge in such capacity and position of the financial condition and business operations of Chelsea House, plaintiff was bound to exercise due and reasonable diligence to inquire into and discover any and all facts material to the financial condition of Chelsea House and to plaintiff's purchase of defendant's common stock, and to obtain, examine and review the pertinent corporate books and records of Chelsea House prior to or in conjunction with his purchase of defendant's stock.

22. By reason of the foregoing, plaintiff knew or should have known of all material facts, and should have exercised the due and reasonable diligence referred to above.

23. By reason of plaintiff's failure to make such inquiry and to exercise such due diligence, plaintiff may not recover from defendant.

AS AND FOR A FIRST COUNTERCLAIM
AGAINST PLAINTIFF

24. Repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 23 of this pleading with the same force and effect as if fully set forth at length herein.

25. This counterclaim is asserted pursuant to the pendant jurisdiction of this Court over the state law claims presented therein.

26. Prior to April 7, 1970, defendant owned 146,183 shares of the common stock of Chelsea House Educational Communications, Inc. ("Chelsea House"), a New York corporation.

27. On April 7, 1970 defendant agreed to sell as a block all of defendant's 146,183 shares of Chelsea House common stock. The 146,183 shares of Chelsea House common stock were purchased in varying amounts by ten individual purchasers including Harold Steinberg, President and Director of Chelsea House (14,618 shares), Andrew Norman, Vice President and Director of Chelsea House (64,754 shares), Stuart Jackson, Esq., General Counsel, Secretary, and Director of Chelsea House (14,618 shares), Fred Israel, an officer of Chelsea House (1,462 shares), Harold Harris, an officer of Chelsea House, (35,000 shares), Leon W. Friedman, an officer of Chelsea House, (731 shares), Stephen Wise, until February 1970 a major shareholder, Vice President and Director of Chelsea House (10,000 shares) and Richard Maybruck, on information and belief, a friend

and associate of Stephen Wise and a client of Stuart A. Jackson, Esq. (5,000 Shares). The purchase price to each purchaser was $3.00 per share. The agreement to purchase was signed for plaintiff by Grant Anderson, Esq., described as attorney-in-fact.

28. Pursuant to the terms of the April 7, 1970 stock purchase agreement and as a part thereof, each purchaser was bound to make a specified down payment to defendant, and further was bound to deliver to defendant two promissory notes in specified amounts due April 10, 1971 and April 10, 1972, respectively.

29. A part of plaintiff Jackson's specific responsibility under the terms of the Stock Purchase Agreements was to make the following payments to defendant:

(a) $ 10,002 on April 10, 1970

(b) $ 16,926 on April 10, 1971, evidenced by plaintiff's note payable.

(c) $ 16,926 on April 10, 1972 evidenced by plaintiff's note payable.

30. On April 10, 1970 plaintiff, his agents and his representatives together with the other nine (9) purchasers of defendant's block of 146,183 shares of Chelsea House common stock, made the specified down-payment to defendant and delivered to defendant the promissory notes in specified amounts as set forth in paragraphs 28 and 29 above.

31. Between April 10, 1970 and August 1970, neither plaintiff, nor any other of the purchasers of

defendant's block of Chelsea House common stock, complained to defendant about said block purchase.

32. In July 1970 Chelsea House filed for reorganization pursuant to Chapter 11 of the Federal Bankruptcy Laws.

33. In August 1970, plaintiff individually and representing two other specified purchasers demanded that defendant Oppenheim repay plaintiff's down payment of $ 10,002.00 and rescind plaintiff's agreement to purchase 14,618 shares of Chelsea House common stock from Oppenheim. Plaintiff also demanded that Oppenheim repay in part the down payments of the two other specified purchasers and rescind the agreement of those two purchasers to purchase Chelsea House common stock from Oppenheim. Plaintiff stated that, in the event these demands were refused by Oppenheim, he would bring law suits on behalf of plaintiff and the two other specified purchasers, but one at a time, starting with one of the other purchasers as the first plaintiff. Plaintiff also stated that, should defendant accept these demands, he would agree not to represent any purchaser in an action for repayment and rescission. At present one such action has been commenced against defendant and is presently pending in this Court.

34. The aforesaid conduct and words of plaintiff individually and as an authorized representative of the two other purchasers, together with plaintiff's institution of the within action for rescission of the stock purchase agreement, return of the cash down-payment made to defendant

and cancellation of the promissory notes executed and delivered to defendant, constitutes a total repudiation of said stock purchase agreement on plaintiff's part.

35. As a result of plaintiff's total repudiation of said stock purchase agreement there is now due and owing to defendant the unpaid balance of plaintiff's purchase price in the amount of $ 33,852.00.

36. Defendant has performed all of the acts and conditions to be done and performed on his part to this moment, and presently is ready, able and willing to complete performance on his part except for plaintiff's said repudiation and refusal to abide by the terms of the stock purchase agreement.

37. By reason thereof, defendant has been damaged in the sum of $ 33,852.00 with interest thereon at the rate of 9 1/2 % per annum.

AS AND FOR A SECOND COUNTERCLAIM AGAINST PLAINTIFF

38. Repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 37 of this pleading with the same force and effect as if fully set forth at length herein.

39. The stock purchase agreement provided that plaintiff shall pay all costs of collection of the monies due to defendant pursuant thereto, including, but not limited to counsel fees incurred in the collection of such monies due to defendant, which counsel fees shall be added to the unpaid balance of such monies due to defendant

under the terms of the stock purchase agreement.

40. The defense of this meritless action by plaintiff for repayment and rescission is essential to the collection of the monies due and owing to defendant under the terms of the stock purchase agreement.

41. By reason of these facts, and by virtue of the provisions of Section 11 (e) of the Securities Act of 1933, 15 U.S.C. § 77 k(e), defendant is entitled to all costs of defending this action by plaintiff for repayment and rescission, including, but not limited to, counsel fees, which fees should be added to the unpaid balance of the monies due defendant under the terms of the stock purchase agreement.

AS AND FOR A THIRD COUNTERCLAIM AGAINST PLAINTIFF

42. This counterclaim is asserted pursuant to the pendent jurisdiction of this Court over the state law claims presented therein.

43. On April 10, 1970, plaintiff purchased 14,618 shares of the Common Stock of Chelsea House Educational Communications, Inc ("Chelsea") from the defendant for the sum of $ 43,854.00. Plaintiff then made a $ 10,002 downpayment to defendant, and caused to be delivered to defendant a series of two promissory notes payable to defendant (Exhibits A and B).

44. The first promissory note (Exhibit A) provides for the payment by plaintiff to defendant of the sum of $ 16,962.00 on April 10, 1971, and for the payment

by plaintiff to defendant of interest at the rate of 9 1/2% per annum on the total unpaid principal amount of the notes from April 10, 1970 in quarterly installments commencing on July 10, 1970.

45. The second promissory note (Exhibit B) provides for the payment by plaintiff to defendant of the sum of $ 16,962.00 on April 10, 1972 and for the quarterly paymet of interest to defendant commencing on July 10, 1970 in the same manner as set forth in paragraph 44 above.

46. Each note provides that if there shall be any default by plaintiff in the payment of any installment of principal or interest when the same shall become due and payable, and if such default shall not have been cured by making remittance to defendant within ten (10) days after mailing of notice thereof, "all installments shall become due and payable" forthwith at the option of the defendant.

47. Each note further provides that if it is placed with an attorney for collection, plaintiff shall pay all costs of collection, including, but not limited to, counsel fees, which fees shall be added to the unpaid balance of the note and be recoverable with and as a part thereof.

48. On March 16, 1971 plaintiff commenced the within action against defendant, seeking, inter alia, the cancellation and rescission of the two promissory notes given to defendant as consideration for the Chelsea Stock.

49. Plaintiff has failed and defaulted in making payment to defendant of the sum of $16,962.00 on April 10,

1971 and in making certain interest payments as required by the notes.

50. On April 14, 1971, defendant duly mailed a notice of default in the payment of principal and interest to plaintiff as provided by the notes.

51. Plaintiff has failed and refused to make payment to defendant of the required principal plus interest within 10 days from April 14, 1971, the date of the mailing of the notice of default as provided by the notes.

52. By reason of the foregoing defendant demands judgment against plaintiff in the amount of $ 33,852 plus interest thereon at the rate of 9 1/2 % per annum, except to the extent of interest payments heretofore made by plaintiff, plus attorneys fees incurred in prosecuting defendant's within counterclaim to enforce collection of the notes.

WHEREFORE, defendant demands judgment (a) dismissing the complaint, (b) granting his first counterclaim in the sum of $ 33,852.00 with interest thereon at the rate of 9 1/2 % per annum, (c) granting his second counterclaim for the costs of this litigation, including, but not limited to, counsel fees, and (d) granting his third counterclaim in the sum of $33,852.00 with interest thereon at the rate of 9 1/2 % per annum plus attorneys fees incurred by defendant in the prosecution of that counterclaim, together with such

other and further relief as to the Court may seem just and proper.

Dated: New York, New York
April 26, 1971.

CURTIS, MALLET-PREVOST,
COLT & MOSLE

By _____

A Member of the Firm
Attorneys for Defendant
Jack Oppenheim,
100 Wall Street
New York, N.Y. 10005
248-8111

$16,926.00

April 10, 1970
New York, New York

PROMISSORY NOTE

For Value Received, Stuart A. Jackson hereby promises to pay to the order of Jack Oppenheim at the 350 Fifth Avenue office of the Bankers Trust Company of New York, the principal sum of sixteen thousand nine hundred twenty-six Dollars ($16,926.00) in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public or private debts, such payment to be made one year from the date of this instrument, together with interest from the date hereof at the rate of 9-1/2% per annum on the unpaid principal amount outstanding on the date on which such interest is due, such interest to be paid in quarterly installments on each April 10, July 10, October 10, and January 10 commencing July 10, 1970.

This note may be prepaid without penalty at any time during the term thereof.

If there shall be any default in the payment of any installment of principal or interest when the same shall become due and payable hereunder, and such default

Exhibit "A"

shall not have been remitted within ten (10) days after mailing a notice thereof, all installments shall become due and payable forthwith at the option of the holder hereof.

The undersigned, if more than one, shall be jointly and severally liable hereunder and, the term "undersigned" shall mean the undersigned or any one or more of them and their heirs, executors, administrators, successors, or assigns.

This note is made in and is intended to be performed in the State of New York and shall be governed and construed in accordance with the laws of such State.

If this note is placed with an attorney for collection, the ~~company~~ maker shall pay all costs of collection, including, but not limited to, counsel fees, which fees shall be added to the unpaid balance of this note and be recoverable with and as a part there of.

Signature. Stuart G. Jackson

Address. Old House Lane, Sands Point N.Y.

Signature.....

Address.....

$16,926.00

April 10, 1970
New York, New York

PROMISSORY NOTE

For Value Received, Stuart A. Jackson hereby promises to pay to the order of Jack Oppenheim at the 350 Fifth Avenue office of the Bankers Trust Company of New York, the principal sum of sixteen thousand nine hundred twenty-six Dollars ($16,926.00) in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public or private debts, such payment to be made two years from the date of this instrument, together with interest from the date hereof at the rate of 9-1/2% per annum on the unpaid principal amount outstanding on the date on which such interest is due, such interest to be paid in quarterly installments on each April 10, July 10, October 10, and January 10 commencing July 10, 1970.

This note may be prepaid without penalty at any time during the term thereof.

If there shall be any default in the payment of any installment of principal or interest when the same shall become due and payable hereunder, and such default

Exhibit "B"

shall not have been remitted within ten (10) days after mailing a notice thereof, all installments shall become due and payable forthwith at the option of the holder hereof.

The undersigned, if more than one, shall be jointly and severally liable hereunder and, the term "undersigned" shall mean the undersigned or any one or more of them and their heirs, executors, administrators, successors, or assigns.

This note is made in and is intended to be performed in the State of New York and shall be governed and construed in accordance with the laws of such State.

If this note is placed with an attorney for collection, the ~~company~~ maker shall pay all costs of collection, including, but not limited to, counsel fees, which fees shall be added to the unpaid balance of this note and be recoverable with and as a part there of.

Signature. Edward A. Jackson

Address... Old House Lane Sands Point, New York

Signature.....

Address.....

Please take notice that the within is a copy of
in the within entitled action duly entered and filed in the office of the Clerk of the within named
Court on the day of 19
Dated, New York, 19

CURTIS, MALLET-PREVOST, COLT & MOSLE,
Attorneys for

One Hundred Wall Street,
New York, N. Y. 10005

TO David Ress

TO David Ress

TO

CURTIS, MALLET-PREVOST, COLT & MOSLE
Attorneys for

ONE HUNDRED WALL STREET, NEW YORK, N. Y. 10005
212 - 248-6111

REPLY TO COUNTER-CLAIMS

Plaintiff, Stuart A. Jackson, by his attorneys, Royall, Koegel & Wells, for his reply to defendant's counter-claims, respectfully alleges:

AS TO DEFENDANT'S FIRST COUNTERCLAIM

1. Denies each and every allegation contained in paragraph 18 of the Answer.

2. Plaintiff denies the allegations contained in paragraph 20 of the Answer except that plaintiff admits that he was generally familiar with the operations and publicly available financial statements of Chelsea House and did participate in and was familiar with some of the negotiations between Chelsea House and some prospective underwriters.

3. Plaintiff denies each and every allegation contained in paragraphs 21, 22 and 23 of the Answer.

4. Plaintiff admits the allegations of paragraph 27 of the Answer except that plaintiff denies that he or Royall, Koegel & Wells were attorneys for or represented Richard Maybruck in connection with the April 1970 stock purchase agreement.

5. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Answer except that plaintiff admits that he did not complain to defendant or his attorney concerning the April 1970 stock purchase

agreement until July or August 1970.

6. Plaintiff denies the allegations of paragraph 33 of the Answer except that plaintiff admits that in late August or early September 1970 defendant came to plaintiff's office to discuss the stock purchase agreement of April, 1970, that plaintiff demanded rescission of the agreement and return of his down payment and that of the plaintiff Richard Maybruck, that plaintiff would agree not to represent any other purchaser if defendant agreed to settle the claims of plaintiffs Jackson and Maybruck and that plaintiff stated that he would commence litigation if defendant did not settle the claims of plaintiffs Jackson and Maybruck. Plaintiff further admits, upon information and belief, that he advised defendant that one Stephen Wise had requested that plaintiff represent him but plaintiff does not recall requesting defendant to settle Mr. Wise's claim at that time.

7. Plaintiff denies each and every allegation contained in paragraphs 34, 35, 36 and 37 of the complaint.

AS TO DEFENDANT'S SECOND COUNTERCLAIM

8. Denies the allegations contained in paragraph 39 of the Answer except admits that the promissory notes and the purchase agreement dated April 10, 1970 contain provisions relating to the payment of attorney's fees and costs of collection which provisions speak for themselves.

9. Plaintiff denies each and every allegation contained in paragraphs 39 and 40 of the Answer.

AS TO DEFENDANT'S THIRD COUNTERCLAIM

10. Plaintiff denies the allegations contained in paragraph 47 of the Answer except that plaintiff repeats and realleges the allegations contained in paragraph 8 of this Reply.

AS AND FOR A COMPLETE AFFIRMATIVE DEFENSE TO EACH OF THE COUNTERCLAIMS SET FORTH IN THE ANSWER

11. Plaintiff repeats and realleges each and every allegation contained in his complaint herein.

WHEREFORE, plaintiff demands judgment dismissing each of the counterclaims alleged in the Answer with prejudice and awarding plaintiff his costs, disbursements and reasonable attorney's fees incurred in connection with this action.

Dated: New York, N.Y.
May 19, 1971

ROYALL, KOEGEL & WELLS

By David F. Dobkin
A Member of the Firm

Attorneys for Plaintiff
200 Park Avenue
New York, N.Y. 10017
Tel. No. 972-7000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STUART A. JACKSON,

Plaintiff,

-against-

JACK OPPENHEIM,

Defendant.

#41471

71 Civ. 1205 (CHT)

MICROFILM OPINION
NOV 21 1974

TENNEY, J.

Plaintiff Stuart A. Jackson ("Jackson") brings this action against defendant Jack Oppenheim ("Oppenheim") pursuant to Section 22 of the Securities Act of 1933, 15 U.S.C. § 77v, Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa and the rules and regulations issued thereunder, and pursuant to the pendent jurisdiction of this Court.[1/]

In the first count of the complaint plaintiff alleges that defendant, in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q, Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j, and Rule 10b-5 promulgated thereunder, "for his own advantage and personal benefit, willfully failed to disclose the deteriorating financial condition of Chelsea House [Chelsea House Educational Communications, Inc.] to plaintiff and others prior to the sale of his Chelsea House stock to them." (Complaint, ¶ 14). In the second count plaintiff alleges that defendant, in violation of Section 12 of the

Securities Act of 1933, 15 U.S.C. § 77l and the rules and regulations promulgated thereunder, "offered to and did sell his Chelsea House stock to plaintiff and others, by the use of means or instruments of transportation or communication in interstate commerce and the mails, by means of certain oral communications that omitted to state material facts about the fast declining financial situation at Chelsea House which were necessary in order to make the statements, made by defendant, in light of the circumstances under which they were made, not misleading." (Complaint, ¶ 20).

Defendant interposes two affirmative defenses and three counterclaims. These will be discussed in detail after a presentation of the facts.

Facts

Chelsea House Educational Communications, Inc., a New York corporation, was organized on November 3, 1966, for the purpose of engaging in the publication and distribution of books and other audio-visual materials.

Defendant Oppenheim was a vice president and director of Chelsea House and was one of its major shareholders. Defendant became increasingly critical of the management of Chelsea House, especially its president, Harold Steinberg, during the early months of 1970. He evidenced his dissatisfaction and proffered several suggestions in the form of a memorandum, prepared in March 1970,

and distributed to several members of Chelsea's Board of Directors and to several officers. No action was taken as a result of this memorandum and, presumably, as a result of his frustration, defendant resigned as vice president on March 6, 1970. He subsequently resigned as a director on April 10, 1970.

Plaintiff Jackson, an attorney and a partner in the law firm of Royall, Koegel & Wells (now Rogers & Wells), was at all times material an officer and director of Chelsea House.

On April 7, 1970, defendant agreed to convey to plaintiff and others his shares of common stock in Chelsea House. Specifically, plaintiff agreed to purchase from defendant 14,618 shares at $3.00 per share. The terms of the sale called for an initial cash payment of $10,002.00 to be made at the closing on April 10, 1970, and also called for the delivery at the closing of two promissory notes, each in the amount of $16,926.00, to become due on April 10, 1971 and April 10, 1972, respectively. Defendant was to deliver 3,334 shares of stock to plaintiff at the closing with the balance of the shares to be held in escrow to secure payment of the notes. The closing took place as scheduled.

On July 2, 1970, Chelsea House filed a petition pursuant to Chapter XI of the Bankruptcy Act, 11 U.S.C. §§ 701 et seq., in the United States District Court for the Southern District of New York. The instant action followed and was tried to the Court.

Plaintiff's Allegations

It is plaintiff's contention that defendant, as an officer and director of Chelsea House, was active in the day-to-day business of that company, and that by reason of this activity defendant had knowledge of certain alleged problems at Chelsea House. These problems included financial difficulty and mismanagement. In plaintiff's view, these difficulties were stated in explicit detail in defendant's March 1970 memorandum of which he (plaintiff) was not possessed. In addition, plaintiff states that as an "outside director" he did not participate in the daily operation of Chelsea House and, consequently, had no knowledge of the financial condition of the company prior to or at the time of his purchase of defendant's stock, and further, that defendant knew that plaintiff was not in possession of this information. Plaintiff maintains that this information was intended to be available for the corporate purpose of Chelsea House and not for the personal benefit of defendant.

It is alleged that once defendant knew that plaintiff was a potential purchaser of the stock, defendant had a duty to disclose any material facts within his knowledge prior to the sale, but that defendant willfully failed to make these disclosures. Specifically, plaintiff alleges that defendant failed to deliver the March 1970 memorandum and that had he (plaintiff) possessed this information, he would not have purchased the

stock. It was only in July of 1970, plaintiff states, that he learned of the true financial condition of Chelsea House.

Plaintiff concludes that the failure of defendant to disclose the material facts concerning the financial condition of Chelsea House constituted a willful omission which, in light of the circumstances, operated as a fraud and deceit upon the plaintiff in violation of the various sections of the 1933 and 1934 Acts cited supra.

Plaintiff recites a payment by his agent in the amount of $10,002.00 to defendant on April 10, 1970, as well as delivery of the promissory notes, and also, receipt by his agent of the 3,334 shares of stock called for in the April 7 agreement.

Plaintiff seeks: (1) a rescission of the agreement dated April 7, 1970 between defendant and himself for the purchase and sale of the shares in question, (2) a return of all monies previously paid to defendant, and (3) a cancellation and rescission of the two promissory notes given by plaintiff to defendant in consideration of the sale.

Defendant's Allegations

On March 13, 1970, defendant was in the offices of the Royall, Koegel firm and visited plaintiff in his office. This was an unscheduled meeting which lasted approximately 15 to 30 minutes. Defendant contends that during this meeting he gave plaintiff his general opinion about many of the problems then

existing at Chelsea House. The thrust of defendant's discussion went to the problems in upper-level management which defendant perceived at Chelsea House, particularly with its president, Harold Steinberg. Defendant stated that in his view Steinberg had to be replaced since the company was unable to secure financing under Steinberg's leadership. In defendant's opinion this difficulty was the direct result of Steinberg's presence and the lack of confidence of many members of the financial community in Steinberg. It was defendant's alleged purpose to secure plaintiff's aid in bringing about the needed change in leadership.

Following the March 13, 1970 meeting defendant then wrote the March memorandum in a last attempt to persuade others on the management team of the need for change at Chelsea House. The March memorandum was, according to defendant, a restatement and an amplification of the subject matter discussed at the March 13th meeting. It contained much criticism, some suggestions for improvement, and a request that a meeting of the Board of Directors be called for April 5, 1970 to discuss the various proposals. The memorandum was given to Leon Friedman, an officer of Chelsea House, with the request that it be distributed. Defendant believes that the memorandum was seen and/or read by several officers and board members.

Defendant next states that sometime during the end of March 1970 he was approached by William Poten, an employee of Chelsea House, who represented to defendant that a management

group was interested in the purchase of defendant's shares of common stock. Defendant agreed to sell at $3.00 per share. The initial group of purchasers grew from three persons to eleven by the date of the closing on April 10.[2/]

Defendant alleges that plaintiff had access to all of the pertinent information, including the information contained in the March memorandum, relevant to the purchase of shares. Defendant argues that plaintiff was an officer and director of the company, served as general counsel to Chelsea House, had access to all financial statements, and had supervised the preparation of the registration statement. Defendant maintains that plaintiff had a duty to act as a reasonable investor and to investigate all facts available to him which were relevant to the transaction, and that plaintiff failed in this duty. Defendant suggests that plaintiff knew or should have known all of the facts relevant to the transaction through the exercise of due diligence and that plaintiff's alleged failure to exercise due diligence should now bar his claim. Defendant argues further that he had no intent to defraud or to conceal any relevant facts, and that all of his actions constituted a good faith effort to disclose that knowledge which he possessed regarding the condition of Chelsea House.

Defendant puts forth two additional contentions. First, he maintains that plaintiff was charged with the knowledge, both actual and imputed, of the purchasing group, its agents, and

representatives and that these agents knew or should have known the allegedly material facts in controversy.[3/] Second, defendant argues that plaintiff purchased the stock, inter alia, under advice, unknown to defendant, that the common stock of Chelsea House would be made the subject of a public offering at $7.00 per share, and that as such plaintiff occupied the status of a tippee.[4/] This reason, defendant charges, should further preclude a recovery.

Defendant interposes three counterclaims. In the first counterclaim defendant charges that plaintiff repudiated the April 7, 1970 stock purchase agreement and that as a result of that repudiation there is now due and owing the balance of $33,852.00 plus interest at the rate of 9-1/2% per annum. Defendant pleads his due performance. In the second counterclaim defendant argues that the terms of the stock purchase agreement provide that plaintiff will pay all costs of collection including, but not limited to, counsel fees which are incurred by defendant. Defendant claims that the defense of the instant action is essential to his collection effort. Alternatively, he contends that the provisions of Section 11(e) of the Securities Act of 1933, 15 U.S.C. § 77k(e), entitle him to reimbursement for costs incurred in the defense of this action. The final counterclaim seeks to enforce a provision in the promissory notes given by plaintiff to defendant whereby, if a default by plaintiff is not cured within ten days following notice of the default, "all in-

stallments shall become due and payable." Additionally, defendant asserts the provisions in each note calling for payment of collection costs by plaintiff in the event that it becomes necessary to place the notes with an attorney for collection. Upon this counterclaim defendant seeks $33,852.00 plus interest at 9-1/2% per annum plus all costs of collection including, but not limited to, counsel fees.

Count One

In count one of the complaint plaintiff alleges violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The requirements for a private cause of action under Section 17(a) are the same as the requirements under Rule 10b-5 for the purposes of this case. Lanza v. Drexel & Co., 479 F.2d 1277, 1280 n.2 (2d Cir. 1973) (en banc). These Sections are essentially the same, except that Section 10(b) and Rule 10b-5 are broader in that they apply to the purchase as well as the sale of securities. Securities and Exchange Comm'n v. Texas Gulf Sulphur Co., 401 F.2d 833, 884 (2d Cir. 1968) (Moore, J., dissenting), cert. denied, 394 U.S. 976 (1969) and 404 U.S. 1005 (1971), citing Ellis v. Carter, 291 F.2d 270, 272-74 (9th Cir. 1961).

The intent of Congress in passing these Sections was to provide equal access to material information. Securities and

Exchange Comm'n v. Texas Gulf Sulphur Co., supra, 401 F.2d at 849. The anti-fraud provisions are intended to prevent "the inherent unfairness involved where a party takes advantage of such information [information intended to be available only for a corporate purpose] knowing it is unavailable to those with whom he is dealing." Cady, Roberts & Co., 40 S.E.C. 907, 912 (1961). Thus, the law imposes a duty either to disclose the material information prior to the stock transaction or to refrain from the transaction altogether. Securities and Exchange Comm'n v. Texas Gulf Sulphur Co., supra, 401 F.2d at 848. The duty to disclose can be breached either by an affirmative misrepresentation or by a nondisclosure. List v. Fashion Park, Inc., 340 F.2d 457 (2d Cir.), cert. denied, 382 U.S. 811 (1965).

The elements to be proven in an action under either Section 17(a) or Section 10(b) and Rule 10b-5 are scienter, materiality, reliance, and due care.

Scienter

Scienter signifies knowledge, i.e., defendant's cognitive state regarding the facts which it was his duty to disclose. The level to which this cognitive element rises can vary from mere negligence with regard to the nondisclosure to an outright intent to defraud. The Circuit Courts of Appeals have been split on the placement of this standard along this spectrum. Several courts have accepted a negligence standard. See, e.g.,

City National Bank v. Vanderboom, 422 F.2d 221 (8th Cir.), cert. denied, 399 U.S. 905 (1970), and Ellis v. Carter, supra, 291 F.2d 270. Controlling on the issue in the Second Circuit is Lanza v. Drexel & Co., supra, 479 F.2d 1277. Judge Moore, writing for the majority, stated:

> "We recognize, of course, that other circuits have expressed approval of a 'negligence' standard. (citation omitted). But we do not find these statements persuasive. In addition to the inappropriateness of a negligence standard ... we believe the actual language of Section 10(b) bars adoption of a negligence standard ...." Lanza v. Drexel & Co., supra, 479 F.2d at 1305.

The Court of Appeals then concluded that "proof of a willful or reckless disregard for the truth is necessary ~~to establish~~ liability under Rule 10b-5." Lanza v. Drexel & Co., supra, 479 F.2d at 1306. Plaintiff clearly has the burden of proving scienter, i.e., defendant's willful or reckless disregard for the truth. Gould v. Tricon, 272 F. Supp. 385 (S.D.N.Y. 1967).

Plaintiff makes no allegation that defendant made untrue statements. Rather, plaintiff alleges an omission to state material facts, namely, that defendant failed to provide him with a copy of the March 1970 memorandum, and further, that defendant did not know whether plaintiff had received a copy from another source. This failure, plaintiff maintains, amounts to a willful and reckless disregard of the fact that plaintiff was not privy to this information. Plaintiff further alleges that this information could not be obtained from other sources.

Defendant maintains that he had no intent to defraud

plaintiff or any of the purchasers of his stock. To the contrary, he contends that he made a good faith effort to disclose all material facts to plaintiff.

Plaintiff has failed to carry his burden of proof with regard to the scienter element. This Court is not convinced, based on the evidence presented, that defendant acted in a manner which exhibited a willful or reckless disregard for tne truth. Rather, the Court is inclined toward the view that defendant made a good faith effort to convince anyone who would listen, that Chelsea House was in a state of crisis. The problem, precisely, was that no one would listen--they generally considered defendant to be a gadfly, a complainer, and something of a nuisance.

Defendant's relations with plaintiff were not particularly cordial. In spite of this, defendant went to plaintiff's office on March 13, 1970 to complain about the management of Chelsea House and the inability of Chelsea House to acquire financing as a result of the alleged mismanagement.[5/] Defendant then expanded on this subject matter in the March 1970 memorandum. He made a reasonable attempt to distribute the memorandum. More importantly, perhaps, there is no evidence that he made any attempt to limit distribution of the memorandum or to limit access to any part of it. Defendant had made his views known time and again. There is simply no evidence of his bad faith.

This Court is not called upon to evaluate defendant's

behavior against the lower "negligence" standard, and expressly declines to consider the question.

Materiality

The fact allegedly misrepresented or omitted must have been material, i.e., a fact to which "'a reasonable man would attach importance ... in determining his choice of action in the transaction in question.'" List v. Fashion Park, Inc., supra, 340 F.2d at 462, citing Restatement, Torts 538(2)(a). Materiality has also been held to encompass those "facts about a corporation's business which in reasonable and objective contemplation might affect the value of the corporation's stock or securities ...." Kohler v. Kohler, 319 F.2d 634, 642 (7th Cir. 1963). Conversely, a defendant is "not required to search out details that presumably would not influence the person's judgment with whom [he is] dealing." Kohler v. Kohler, supra, 319 F.2d at 642. Nor is he "obligated to confer upon outside investors the benefit of his superior financial or other expert analysis by disclosing his educated guesses or predictions." Securities and Exchange Comm'n v. Texas Gulf Sulphur Co., supra, 401 F.2d at 848. There is no obligation to render an "economic forecast". Arber v. Essex Wire Corporation, 490 F.2d 414, 421 (6th Cir. 1974).

Plaintiff details several allegedly material facts contained in the March 1970 memorandum which he contends were never disclosed. These are as follows:

"1) When the 'Buck Rogers' book was planned, no one realized that it could not make a profit until it sold 25,000 copies. This fact was only discovered after the book was published and in the book stores.

"2) The publicity department at Chelsea House ran costly ads in the newspapers when the books which were the subject of those ads were not in the stores.

"3) Books were added to the Chelsea House book list that no one had seen, let alone read, and without any preliminary production and editorial costing.

"4) Management produced films without scripts, without school curricular orientation and largely without purchasers.

"5) Bill Poten, the national sales manager of History Machine, the Company's most important asset, was totally inexperienced and without the educational background to handle that job and Andrew Norman, the Controller of the Company, also had no prior experience in fiscal matters as demonstrated by his inability to approximate year-end earnings two months after the 1969 fiscal year ended.

"6) With regard to the Company's financial situation, the Company was near the end of its credit with Random House and the banks, and the Company was forced to spend an inordinate amount of time deflecting various of its creditors.

"7) The Company was in a state of emergency with its current liabilities exceeding its current assets by $500,000 and bankruptcy was imminent." (Plaintiff's Post-Trial Memorandum of Law at 10-11).

Virtually all of this information is material in nature when viewed together. While no one piece of information was per se critical, each being no more than a mere detail, the total was of a quality that would guide a potential purchaser's approach to a transaction.

Certain of these statements are not material, however.

For example, defendant's conclusions that certain of his fellow employees were incompetent was his opinion and was neither fact nor material. Also, defendant's assertion that bankruptcy was imminent was nothing more than the educated guess or prediction of a layman. In fact, all around him heartily disagreed.

Reliance

Proof of reliance as an element in a 10b-5 case, and the placement of the burden of proof on the issue of reliance (if it continues to exist as an element to be proven), are cloudy issues in this Circuit. Formerly, the proper inquiry on the issue of reliance had been to ask "whether the plaintiff would have been influenced to act differently than he did act if the defendant had disclosed to him the undisclosed fact." List v. Fashion Park, Inc., supra, 340 F.2d at 463. The rule enunciated in the List case, however, appears to have suffered some erosion of late. The result remains unclear.

This Court and the United States Court of Appeals for the Second Circuit have noted the recent decisions of the United States Supreme Court in Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970) and Affiliated Ute Citizens v. United States, 406 U.S. 128 (1972). The Court of Appeals, in commenting on these cases, noted that

> "the Supreme Court held that, under the circumstances of those two cases, it was unnecessary to prove actual reliance. It was enough that there were material misre-

> presentations in solicitation [of] documents which were 'an essential link in the accomplishment of the transaction.' (citation omitted) The full implications of those decisions have not yet been determined. (citations omitted) We decline to hold on the present state of the law that it was plain error for the district court in the instant case not to have instructed the jury according to the Mills and Ute formulations." Cohen v. Franchard Corporation, 478 F.2d 115, 124 n.12 (2d Cir. 1973), cert. denied, 42 U.S.L.W. 3197 (U.S. Oct. 9, 1973).

As the above-quoted passage seems to indicate, those holdings by the Supreme Court may be limited to the factual situations presented in each of those cases. This Court can only assume that reliance continues to be an element in 10b-5 cases.

Fortunately, the presence or absence of reliance as an element will not affect the outcome of the instant case. However, for the sake of completeness this Court will briefly examine the evidence submitted on this issue.

This Court is not impressed with plaintiff's bare assertion that he would have acted differently. Plaintiff either had in his possession or had access to all of the material information known to defendant, yet he remained unmoved. Nor did plaintiff choose to follow up on the March 13, 1970 meeting in any manner. There is no basis for this Court to find that the March 1970 memorandum would have tipped the scales.

Defendant contends that plaintiff relied on the possibility of a public offering at approximately $7.00 per share. There is no need to address this allegation. It is sufficient

to state that plaintiff has failed to show that he would have been influenced to act differently.

Due Care

The regulatory goal sought to be achieved by Congress in enacting these Sections was that material corporate information be equally accessible to all parties. Thus, an "insider" would not normally be allowed to recover against another "insider" since they would normally have equal access to information. The question, however, of who is an "insider" would not necessarily turn on the position or title which one holds. Rather, it would turn "on the basis of what a party knows or reasonably should know considering the information to which he has access." Harnett v. Ryan Homes, Inc., 360 F. Supp. 878, 886 (W.D. Pa. 1973). Therefore, the examination of due care must be concerned with whether plaintiff either had the knowledge, or if he did not, whether he exercised due care to obtain information to which he had access. The question of access necessarily includes the question of equality of access.

Plaintiff was an officer and director of Chelsea House. He maintains that in spite of this he was an "outsider" as he performed no managerial function and was not involved in the day-to-day affairs of Chelsea's management. He maintains that he not only had no access to the information in question, but also that an examination of the books and records of Chelsea

House would not have revealed the material contents of the March 1970 memorandum. This Court is not convinced.

Plaintiff was an officer and director of Chelsea House and was also in charge of Chelsea's account at his law firm. In this latter capacity he did review the Chelsea registration statement and subsequently signed it as a director. He is bound by the knowledge contained therein. He has also held a stock interest in Chelsea House at one time.

Plaintiff was instrumental in introducing Chelsea House to several underwriters and from time to time participated, at least peripherally, in meetings between Chelsea and the underwriters. He also knew in each instance of the outcome of negotiations with various underwriters.

Plaintiff had made the initial contact with Price Waterhouse, and though he then retired from active participation in this relationship, he resurfaced after the fiscal year-end to urge Steinberg to have Price Waterhouse prepare up-dated financials. His access to this up-dated information, if any, was at least equal to defendant's.

Plaintiff states that he made repeated inquiries of Steinberg. These questions were at all times very brief and very general in nature. Steinberg's replies on all occasions were equally brief and general. Plaintiff maintains that he believed Steinberg's representations, and that there was no indication that further inquiry was needed. To the contrary, the

New York Magazine article,[6] inter alia, made quite specific reference to Steinberg's reputation for making the truth "elusive". Also, Steinberg's representations were made in the face of the turnaround experienced from the results of the first six months of fiscal 1969 (unaudited) to the results for the fiscal year ended October 31, 1969 (audited). This was a turnaround of approximately $150,000 of net earnings. Plaintiff testified that this turnaround did not alarm him. However, when you add the New York Magazine article and the financial problems to the complaints of the defendant, it is hard to imagine that plaintiff could persist in his reliance on Steinberg's advice, or even if he continued to rely, that he would not make more extensive inquiries. Plaintiff admittedly possessed a high degree of sophistication with regard to corporate matters as evidenced by his service as director on the boards of approximately ten companies.

The accounting procedures at Chelsea House were haphazard at best. Plaintiff maintains that the lack of interim financial statements and the imprecise accounting procedures would have made much information inaccessible to him. However, as the testimony of Mae Kessler, the bookkeeper at Chelsea House, indicated this information was equally inaccessible to both plaintiff and defendant. Indeed, she testified that she would not have afforded access to any of the books to either plaintiff or defendant without the approval of Steinberg and with his approval she would have granted all information and access to information to both

parties on an equal basis.

Plaintiff alleges further that a conspiracy of silence existed at Chelsea House and that this would have prevented his gaining much material information regardless of his inquiries. Even assuming such a conspiracy existed, and there is no finding to that effect, defendant here was clearly no party to it. To the contrary, defendant was considered objectionable by those around him for his constant badgering about problems he perceived at Chelsea.

Certain other factors deserve mention as they lend color to the picture and should have caused plaintiff to inquire further. The mere fact that the books and records of Chelsea House were in disarray should have ignited a spark of concern. Also, the existence of a personality conflict of the magnitude evidenced here between two major stockholders and officers of such a small, privately held corporation is, in itself, a warning. Lastly, plaintiff, in a sworn petition in support of his law firm's petition for legal fees in Chelsea's Chapter XI proceeding, stated that he (his firm) was "fully familiar" with the business of Chelsea House and its financial condition during the period prior to the filing of the petition. While no one of these factors, standing alone, would necessarily prompt plaintiff to make further inquiry, the sum total was more than sufficient to prompt plaintiff, in the exercise of due care, to inform himself further prior to his purchase of stock. He has failed in his duty to

exercise due care.

Count Two

Plaintiff alleges that defendant violated Section 12 of the Securities Act of 1933, 15 U.S.C. § 771, by an omission to state material facts about the financial affairs of Chelsea House.

On this issue, defendant has the burden of proving lack of scienter. Hill York Corp. v. American International Franchises, Inc., 448 F.2d 680 (5th Cir. 1971). Defendant has sustained his burden of proof that he exercised reasonable care to avoid any omission of material fact which could have caused plaintiff to be misled.

Counterclaim

Having found defendant to be free from liability on the plaintiff's claims, this Court finds no reason to deny enforcement of the stock purchase agreement and promissory notes given to defendant by plaintiff.

Accordingly, this Court denies the relief requested by the plaintiff in count one and count two of the complaint and grants judgment to the defendant on the counterclaim in the amount of $33,852.00 plus interest at the rate of 9-1/2% per annum as provided in the promissory note. In addition, costs

and fees are granted to the defendant. The parties are to submit papers regarding the determination of costs and fees within ten days of the entry of this judgment.

So ordered.

Dated: New York, New York
November 21, 1974

Charles D. Brieant
U.S.D.J.

STUART A. JACKSON,
Plaintiff,
-against-
JACK OPPENHEIM,
Defendant.

71 Civ. 1205 (CHT)

FOOTNOTES

1/ Jurisdiction has been held valid by Judge Cooper. 71 Civ. 1205 (April 16, 1971) at 4.

2/ See Plaintiff's Exhibit 4 for the final list of purchasers.

3/ Since the conclusion of this Court is that plaintiff either possessed or had access to all of the material information in question, it will be unnecessary to examine this question.

4/ It will be unnecessary to reach this question based on the finding of the Court for defendant.

5/ Apparently plaintiff did not concur as he chose to characterize the situation as a mere "personality conflict" between defendant and Steinberg, and took no further action.

6/ This article, entitled "The Chelsea Boys and How They Grew", is defendant's Exhibit A.

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COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STUART A. JACKSON,

Plaintiff,

-against-

JACK OPPENHEIM,

Defendant.

71 Civ. 1205 (CHT)

ENTERED

MEMORANDUM

TENNEY, J.

Defendant, Jack Oppenheim, seeks an award of "costs and fees" pursuant to the previous Order of this Court filed on November 21, 1974 and in accordance with the provision which so provides in the notes. Defendant proffers for this Court's approval a suggested fee award of $12,020.25 and costs of collection in the amount of $1,576.40, for a total award of $13,596.65. For the reasons stated below, the Court approves an award in the amount of $12,850.00.

Plaintiff has challenged defendant's requests on a variety of grounds. Initially, plaintiff charges that the defendant erroneously computed the interest due on the promissory notes which were the subject of the defendant's counterclaim herein.

The previous Order of this Court "grant[ed] judgment to the defendant on the counterclaim in the amount of $33,852.00 plus interest at the rate of 9-1/2% per annum as provided in

the promissory note."[1/] Defendant contends that he is entitled to the principal amount plus interest at the rate of 9-1/2% until the date of entry of judgment. Plaintiff contends that defendant is entitled to interest on the notes at the rate of 9-1/2% per annum on the principal sum from April 10, 1970 until their respective maturity dates, and thereafter at the legal rate of interest applicable.

The parties have agreed via a provision in the notes in question that the notes were to be governed by, and construed in accordance with, the laws of the State of New York. This provision is valid and the Court notes that, even in the absence of such a provision, the laws of the State of New York would apply. See, e.g., Alland v. Consumers Credit Corporation, 476 F.2d 951, 954-55 (2d Cir. 1973).

> "Ordinarily, interest prior to the maturity of the contract is payable by virtue of the contract, and thereafter as damages for breach of the contract, so that after maturity (or default that accelerates maturity) the rate of interest is to be computed at the rate then prescribed by statute.... But when the contract provides that interest shall be paid at a specified rate until the principal shall be paid, the contract rate governs until payment of the principal, or until the contract is merged in a judgment." Stull v. Joseph Feld, Inc., 34 App. Div. 2d 655, 656, 309 N.Y.S.2d 985, 987 (2d Dep't 1970) (citations omitted).

In the Stull case the provision in the note provided that interest was to be paid at the contract rate "until the entire principal sum hereof has been fully paid." Id. at 656,

309 N.Y.S.2d at 986. The provision in the instant notes calls for payment of

> "interest from the date hereof at the rate of 9-1/2% per annum on the unpaid principal amount outstanding on the date on which such interest is due, such interest to be paid in quarterly installments on each April 10, July 10, October 10, and January 10 commencing July 10, 1970."

Even construing the language employed most strongly against the plaintiff, the party responsible for drafting the agreement, Darrow v. Family Fund Society, 116 N.Y. 537, 544, 22 N.E. 1093, 1095 (1889), the Court would be straining unduly to adopt the meaning which defendant presses. In Stull, the language was clear and unambiguous, calling for the contract rate to prevail "until the entire sum hereof has been fully paid." (emphasis added). The instant notes, however, contain no such strong, clear, and unambiguous language. While they are arguably susceptible of a similar interpretation, it would be overreaching for the Court to fill the empty spaces in the absence of some stronger indicia of the parties' intention. Thus, interest will run at the contract rate until maturity, and thereafter at the rate prescribed by law.

Attorneys' Fees

Defendant has entered into an arrangement with his counsel which calls for both a contingent fee amounting to 25% of any recovery and the payment of expenses. Plaintiff chal-

lenges both the defendant's right to recover fees, and, if recoverable, the amount thereof. Plaintiff contends that the fee claim is excessive and the claim for costs is improper.

It is clear from the outset that the claim for fees and costs pursuant to the provision in the notes is valid under New York law, General Lumber Corp. v. Landa, 13 App. Div. 2d 804, 216 N.Y.S.2d 33 (2d Dep't 1961); Raymond v. Smiley, 96 N.Y.S.2d 891 (Sup. Ct. 1949), aff'd, 276 App. Div. 1049, 96 N.Y.S.2d 305 (4th Dep't 1950), and enforceable in the federal courts, Tartell v. Chelsea National Bank, 351 F. Supp. 1071 (S.D.N.Y.), aff'd, 470 F.2d 994 (2d Cir. 1972), and this is true despite the fact that the collection effort came in the form of a counterclaim by defendant to plaintiff's securities action. Id. at 1079-80. Cf. Alland v. Consumers Credit Corporation, supra, 476 F.2d at 955-56.

In ascertaining the reasonableness of the fee request, this Court must assure itself that there is a factual basis for the award based on "accurate and current records of work done and time spent." In re Hudson & Manhattan Railroad Company, 339 F.2d 114, 115 (2d Cir. 1964). And while the Court may look to any fee contract existing between the party and his counsel, it is not bound by it. Radiator Specialty Company v. Nicek, 395 F.2d 763, 765 (9th Cir. 1968). The Court has inspected the time sheets submitted by defendant's counsel and finds them to be correct and in good order both as to hours charged and as to

the billing rates applied.[2/] The total, had this time been billed at the normal hourly rate, would have been $22,312.00. Also, this figure is exclusive of the approximately fifty (50) hours expended by the partner who handled the trial of the case. It should be noted that this amount far exceeds the amount dictated by the fee contract.

The factors which the Court must consider in reaching its determination regarding the reasonableness of the fee award include: (1) time, (2) standing of the lawyer at the bar, (3) amount involved, (4) benefit to the client, and (5) skill demanded. Spanos v. Skouras Theatres Corporation, 235 F. Supp. 1, 17 (S.D.N.Y. 1964), aff'd en banc, 364 F.2d 161 (2d Cir.), cert. denied, 385 U.S. 987 (1966). See also Leighton v. New York, Susquehanna and Western R. Co., 455 F.2d 389, 392 n.5 (2d Cir.), cert. denied, 406 U.S. 920 (1972); Paolillo v. American Export Isbrandtsen Lines, Inc., 305 F. Supp. 250, 251 (S.D.N.Y. 1969).

A review of the docket herein indicates that in addition to the review of the complaint and the preparation of the answer and counterclaim there was significant other pre-trial activity including several depositions and the preparation of a motion for summary judgment. Both trial and post-trial memoranda were prepared by counsel, as were a pre-trial order and proposed findings of fact and conclusions of law. Trial preparation included the interviewing of witnesses and the preparation of exhibits

and was commensurate with the norm for a three-day trial such as this.

The standing of counsel at the bar is unquestioned. Defendant's counsel, and particularly the partner who tried the case, were thoroughly familiar with all aspects of the case and prosecuted the action with skill.

The amount in controversy, while not astounding in light of some verdicts rendered in this Court, is nevertheless substantial.

The benefit to the client is amply demonstrated by the recovery on the counterclaim in the full amount sought.

Finally, the skill demanded of defendant's counsel in successfully prosecuting the counterclaim was substantial. While the Court does not compensate the defendant's attorney for the defense of the plaintiff's securities action, per se, it is abundantly clear that the defense of the plaintiff's claim and the prosecution of the defendant's counterclaim on the notes involved many overlapping issues which made substantial demands on counsel, and the skills possessed by counsel were amply demonstrated.

Having reviewed these various factors, the Court finds an award in the amount of $12,850.00 to be reasonable, which amount shall be deemed to include "costs" of collection as indicated in the previous Order of this Court. See, e.g., Tartell v. Chelsea National Bank, supra, 351 F. Supp. at 1080.

Accordingly, defendant's request for an award of reasonable attorneys' fees is granted in the amount of $12,850.00. Interest on the amount recovered on the counterclaim is to be computed at the contract rate until maturity, and thereafter at the rate prescribed by law until the entry of judgment.

Submit an Order in conformity with this memorandum within five (5) days of the filing thereof.

Dated: New York, New York
October [illegible], 1975

CHARLES H. TENNEY

U.S.D.J.

STUART A. JACKSON, Plaintiff, 71 Civ. 1205 (CHT)

-against-

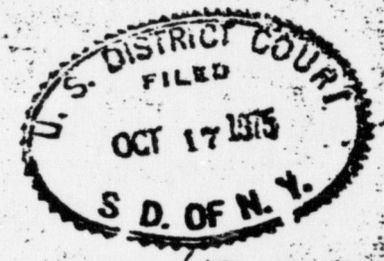
JACK OPPENHEIM, Defendant.

FOOTNOTES

1/ 71 Civ. 1205 (filed November 21, 1974), at 21.

2/ Time was charged at a variety of rates, ranging $16-$40 per hour.

60



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STUART A. JACKSON,

Plaintiff,

- against -

JACK OPPENHEIM,

Defendant.

71 Civ. 1205 (CHT)

ORDER + Judgment

75826

This action having come on for trial before the Honorable Charles H. Tenney, District Judge, presiding, and the issues having been duly tried, and the Court having rendered and filed its opinion on November 21, 1974 a) denying the relief requested by plaintiff in counts one and two of the complaint, b) granting judgment in favor of the defendant on his counterclaims in the amount of $33,852.00 plus interest at the rate of 9 1/2 percent per annum as provided in plaintiff's two promissory notes, and c) granting costs and fees to defendant, and defendant having submitted papers regarding the Court's determination of the costs and fees to be paid to defendant.

Now, upon reading and filing the affidavit of Peter Fleming Jr., Esq., dated December 10, 1974 submitted in support of

defendant's claims for legal fees and costs, and the affidavit of Leonard R. Glass, Esq., dated December 17, 1974 submitted in opposition thereto, and upon due consideration thereof, and the Court having rendered and filed a memorandum opinion dated October 7, 1975, granting costs and fees to the defendant, and further providing that the interest to be recovered by defendant on his counterclaims is to be computed at the rate of 9 1/2 percent per annum until the maturity dates of plaintiff's promissory notes payable to the order of defendant and thereafter at the rate proscribed by law until the entry of judgment, it is hereby

Ordered that judgment be entered dismissing plaintiff's complaint on the merits, and it is further,

Ordered that judgment be entered in favor of defendant on his counterclaims against plaintiff in the sum of $33,852.00 plus interest thereon in the sum of $11,678.74, said interest being computed at the rate of 9 1/2 percent per annum until the maturity dates of plaintiff's two promissory notes payable to the order of defendant, such interest subsequent to such maturity dates to be computed at the rate proscribed by law until the entry of judgment, as set forth hereinbelow:

Principal Amount of First Promissory Note .	$16,926.00	
Payable on April 10, 1971		
Interest at 9 1/2% per annum from January 10, 1971 to April 10, 1971	401.99	
Interest at 7 1/2% per annum from April 11, 1971 to August 31, 1972	1,824.03	
Interest at 6% per annum from September 1, 1972 to October 14, 1975 . .	3,238.34	
Total Interest On First Promissory Note . .	$ 5,464.36	$ 5,464.36
Principal Amount of Second Promissory Note	$16,926.00	
Payable on April 10, 1972		
Interest at 9 1/2% from January 10, 1971 to April 10, 1972 .	2,112.84	
Interest at 7 1/2% per annum from April 11, 1972 to August 31, 1972	546.20	
Interest at 6% per annum from September 1, 1972 to October 14, 1975 . .	3,555.34	
Total Interest on Second Promissory Note .	$ 6,214.38	6,214.38
Total Interest Payable		$11,678.74

And it is further ordered that judgment be entered in favor of defendant and against plaintiff in the sum of $12,850.00 representing reasonable attorneys' fees awarded to defendant, such sum to include defendants' costs of collection, and it is further,

Ordered that judgment as provided above be duly entered by the Clerk of this Court, against plaintiff for the sum of $33,852.00, together with interest thereon in the sum of $11,678.74 plus the sum of $12,850.00 representing reasonable attorneys' fees awarded to defendant, said judgment totalling the sum of $58,380.74.

Dated: New York, New York
October 16, 1975

Charles H. Tenney
U.S.D.J.

JUDGMENT ENTERED - 10/17/75
Raymond F. Burghardt
CLERK

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

STUART A. JACKSON,

Plaintiff,

-vs-

JACK OPPENHEIM,

Defendant.

71 Civ. 1205

BEFORE: HON. CHARLES H. TENNEY, D. J.

September 10, 1974
10:30 a. m. - Room 906

APPEARANCES:

GLASS GREENBERG & IRWIN,
Attorneys for Plaintiff,
BY: LEONARD R. GLASS, ESQ., and
LIONEL A. BARASCH, ESQ.,
Of Counsel.

CURTIS MALLET-PREVOST, COLT & MOSLE, ESQS.,
Attorneys for Defendants
BY: PETER FLEMING, ESQ.,
ALAN SPARER, ESQ., and
DOUGLAS MANSFIELD, ESQ.,
of Counsel.

Am. T-1

STUART A. JACKSON,

-vs- 71 Civ. 1205

JACK OPPENHEIM,

September 11, 1974
10:30 A. M.

(Trial resumed.)

(All counsel present.)

H A R O L D S T E I N B E R G, resuming the stand.

CROSS-EXAMINATION (CONTINUED)

BY MR. FLEMING:

Q Mr. Steinberg, when we concluded yesterday I was questioning you about your purchase or the buy-out of Jack Oppenheim's shares. Do you recall that?

A I think I do, yes, sir.

Q And did you testify that initially the group purchasers consisted of you personally, Andrew Norman, perhaps Mr. Harris and perhaps Mr. Wise; is that correct?

A That was part of the early group, as I remember it, yes.

Q And did you testify that the price of $3 a share was fixed as a result of negotiations between that group and Mr. Oppenheim?

A It wasn't fixed early on.

Q My question is, was it fixed as a result of the negotiations between that group and Mr. Oppenheim?

A At one point it came to be fixed, yes.

Q As a result of negotiations?

A Right.

Q And it was after the price of $3 was fixed that you first spoke to Stuart Jackson about the buy-out of Oppenheim, did you so testify yesterday?

A Let me qualify it, if I may.

Q Well can you answer the question first? Did you so testify yesterday?

A I don't remember that, specifically that, in that exact form but as to the actual event --

Q Did you testify yesterday that you called Mr. Jackson the middle of one evening --

A Yes.

Q -- and told him that you were buying Jack out and the price was $3 a share and were there any legal problems?

A Yes, that is true.

Q And it was at that conversation or thereafter that Mr. Jackson in whatever form agreed to participate?

A That is right.

Q So as a matter of fact the price of $3 a share was fixed before Jackson was made aware of the sell-out?

A The only question I have with that summary is the word "fixed". Whether it was that firm at that point I am not sure. There certainly was a discussion about the approximate price. That is the only thing I want to qualify.

Q All right. Now to get the chronology straight, Mr. Oppenheim submitted a letter of resignation in February, effective March 6th, 1970; is that correct?

A He submitted a letter of resignation. The exact effective date I just don't remember.

Q Would you accept the representation that the effective date was March 6, 1970?

A It could well be, yes.

Q And am I correct that the negotiations to buy Oppenheim out commenced after the effective date of the resignation, insofar as this group is concerned?

A I believe so, yes.

Q All right. Now you testified yesterday that you personally did not read Mr. Oppenheim's memorandum of criticism of the affairs of the corporation?

A Yes, sir.

Q You did testify, however, that you did discuss the contents of that memorandum with Fred Israel?

A Fred Israel discussed that with me. He told me generally about what was in it.

Q All right. And am I correct that you also discussed or that Mr. Norman also discussed generally the contents of that memorandum with you?

A As I remember, I don't believe we actually discussed it thoroughly. There may have been some mention of it but there was no discussion in depth at all.

Q Do you recall Mr. Leon Friedman discussing the contents of the memorandum?

A He might have but not in great detail.

Q Well do you recall speaking with Mr. Mansfield, an associate of mine,on this past Friday about these events?

A I spoke to Mr. Mansfield and he asked me several questions, yes.

Q Do you recall speaking with Mr. Mansfield?

A Yes, I recall speaking with Mr. Mansfield.

Q That is the man in the center?

A Yes, I recognize him.

Q Did you tell Mr. Mansfield that you never saw the Oppenheim memo, all you were aware of was conversation with Norman, Israel and Friedman?

A With the exception that it had been shown to me at a deposition involving a case of Harold Harris about a month or two ago. I glanced at it then.

Q But you didn't Israel you had read Mr. Oppenheim's memorandum, you had been aware of its contents.

A Some of them.

Q Through conversation with Normal, Israel and Friedman?

A Yes, sir, some of them.

Q And now, you testified and I believe you reaffirmed it this morning, that you called Mr. Jackson, withdrawn.

Did you testify yesterday that your best recollection,the sale or purchase, whichever you want to call it of the Oppenheim shares, the buy-out, was initiated by Oppenheim?

A I was under the impression that it was and I also qualified it as to the extent that it isn't clear in my mind, and the reason I came to the impression was that Oppenheim had

earlier tried to sell his stock to Norman and I assumed that same impulse was going on.

Q I am not interested in your assumptions, Mr. Steinberg, with all deference?

A Thank you.

Q You recall having a deposition taken in the case of Lunenfeld against Harris, Steinberg, Norman, Friedman, Wise, Israel and Jackson and Chelsea Educational Communication, Inc.?

A Yes, I believe I was deposed in that deposition.

Q According to the record here it took place on May 2, 1972 and was conducted by Mr. Tiefenbrun on behalf of the plaintiffs. Do you recall that?

A I don't remember that name but I will accept that there was a deposition on that date.

Q Do you recall being asked the following question and giving the following answers, page 13 line 10:

"Q You told me before you told Lunenfeld 'We are buying out Oppenheim'.

"A That is correct.

"Q And did you tell him who the 'we' were?

"A I didn't tell him every individual because I didn't know at the time but the probable individuals were Andrew Norman and myself.

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"Q You told me before you told Lunenfeld 'We are buying out Oppenheim'.

"A That is correct.

"Q And did you tell him who the 'we' were?

"A I didn't tell him every individual because I didn't know at the time but the probable individuals were Andrew Norman and myself.

"Q The question is did you tell him?

"A Yes, I told those two at least. I said some others.

"Q When did the deal gel so you knew you were going to buy Oppenheim?

"A It was a negotiation that went on through Bill Poten, two, three weeks.

"Q Would you explain in a little detail how this negotiation worked through Bill Poten?"

Poten was an employee of Chelsea House, is that correct?

A That is true.

Q "A Okay. Jack Oppenheim resigned the company sometime I believe in February or March. I came back from lunch and found his resignation on my desk.

"Q Did he give any reason for his resignation?

"A No, just a one sentence statement I am resigning as of this and this date. I will keep my office up to this date.

"Q Did he resign as officer and director?

"A Yes. And we discussed how it was specifically sparked or generated this time but the issue came up about buying Jack's stock and Bill being the intermediary because all of us knew if we were to be face to face, there would be

no resolution because there was so much emotion involved one way or the other."

A That sounds like me up to now.

Q Were you asked those questions and did you give those answers?

A I don't recall the exact questions and answers as the event but it sounds like me more or less and this is the process of what happened.

Q That was the truth under oath?

A As far as I remember, yes.

Q As far as you remember today?

A Yes. What was the date of that deposition I am sorry? It will give me a sense of time.

Q May 2, 1972.

It is also true to your knowledge, am I correct, Mr. Steinberg, that Mr. Poten was paid a commission not by Mr. Oppenheim but by the purchasers?

A Yes, I mentioned in response to that question about a commission that I vaguely remember something about a commission.

It wasn't cash, it was a promise of some kind of stock option thing and I am not sure about the details of that.

Q Without regard to the form of the commission, be it

stock or cash, am I correct that the only people that were obliged to do anything for Poten as a result of his acting as intermediary were the purchasers?

A I don't know what you mean by obliged. In the sense did we agree to do it? That agreement came into being during the course of negotiations.

We weren't obliged to give him anything. We agreed to give him something.

Q After you agreed you were obliged?

A Yes, sir, that is right.

Q That is the purchasers who paid Poten the commission?

A It was an obligation that existed in the nature. It is something we agreed to do.

Q But you are a man of your word?

A I try to be, yes.

Q And it was the purchasers who agreed to give Poten something in return for acting as intermediary?

A Yes, sir, as I remember.

Q As a matter of fact, Oppenheim and Poten in writing specifically stated that Oppenheim himself will give Poten nothing?

A I don't know about that.

Q You never saw that?

A I never saw that document as far as I know.

MR. FLEMING: Will you mark this for identification, please.

xxx (Defendant's Exhibit D marked for identification.)

Q I show you Defendant's Exhibit D for identification. Did you ever see this document?

A As far as I remember, I don't remember seeing this, no.

Q And now, if you would, Mr. Steinberg, would you please put aside your opinion or your judgment or your analysis of what the facts relating to the business of Chelsea House meant as a matter of business judgment. You did personally know what books comprised the so-called Christmas list, is that correct?

MR. GLASS: Can we fix a date?

A Which list?

THE COURT: I assume in 1969.

MR. FLEMING: Yes, I am sorry, your Honor.

Q I am now going to ask you questions about that so-called Christmas list for Christmas of 1969.

A Yes.

Q As head of the company you did know what books comprised that Christmas list?

A I did know but I do not know now.

Q But you didn't forget by January, did you?

A No.

Q You didn't forget by February of 1970, did you?

A I don't believe so.

Q By March of 1970 or April of 1970?

A No.

2-1 Q So at that time you knew what books comprised the Christmas list, is that correct?

A Yes.

Q As a matter of fact, you knew how many of those books had been printed and distributed?

A Yes.

Q You knew whether there had been any re-orders for those books?

A Yes.

Q You knew the sales or the reported sales on those books?

A Not exactly, no. That is what I didn't know, and that is what nobody knew at Christmas time certainly.

Q But thereafter were you receiving reports as to the sales of those books?

A Well, as I remember it --

Q Will you answer the first question.

A Which is the first question?

Q Between Christmas 1969 and let us take March 1, 1970,

had you, Chelsea House, received any reports from its distributors or its publishers as to the sales of books on the Christmas list?

A For Christmas?

Q As to the sales of books on the Christmas list?

A I have a recollectionof a report -- as a matter of fact I spoke to our bookkeeper this morning about that -- I have a recollection, she had a recollection of a report coming in in May.

When you say January, February we had, except in terms of the kind of feedback you get from a sense of feeling how a book was selling, there was no computer reports in January as far as I know and none in February. There might have been something in March but I don't remember it at this point. That is a questionof record.

But what is true is there were generally delays on their computer reports. The computer frequently had trouble.

Q You knew whether there had been reorders?

A I certainly knew about the books, reports on books.

Q You knew whether or not there were reorders on books on the Christmas list?

A Yes.

Q And the volume of book that had been printed and already on the book stands?

A Right.

Q Now, what was your capacity at the company, your title?

A President. In 1969?

Q Yes.

A I was president.

Q Is it fair to state that you knew as much about the business of Chelsea House as Mr. Oppenheim?

A I think so, yes.

T-3-1

Q By the way, with regard to that, it is "second printing" a phrase which can be used in place of "re-order"? Does it mean the same thing?

A No, they don't at all.

Q All right, what does "second printing" mean?

A "Second printing" is, generally speaking, when you run out of the first printing, you print the book again.

Q Right.

A Now a re-order comes as a result of a sales experience in the stores. You may have enough in the first printing to do it.

Q You had enough information with regard to the Christmas list, with regard to second printing?

A We did on one book.

Q You knew whether or not there was a demand sufficient to require reprinting with regard to all of your books?

A Not at that moment. We were told, as I think I testified yesterday --

Q Let me stop you. Your answer is "not at that moment"?

A Yes, not in January.

Q Am I correct that --

MR. GLASS: Your Honor, may he not finish his answer?

He asked him what he knew about the book list in 1969 and the witness started to reply.

MR. FLEMING: I did not ask him that question.

A There is, I must say --

MR. FLEMING: Mr. Steinberg, please!

THE COURT: Go ahead.

Q I am directing your attention to the question of second printings.

A Yes.

Q Am I correct that before Chelsea House would undertake a second printing you would have to have information showing that the demand for the book exceeded existing supply of the book?

A Yes, true.

Q So in the absence of such information there would be no second printing?

A That's true.

Q Now with regard to the Buck Rogers book, the demand was sufficient so that a second printing seemed in order?

A According to Random House.

Q According to Random House, and that is the book to which you referred?

A Yes.

Q Am I correct that of all the books of the Christmas

list that was the only book where reprinting seemed in order, according to the information available to you?

A So far as I can remember.

THE COURT: As of March?

A Which period are you talking about?

Q As of the period --

THE COURT: March 1970.

THE WITNESS: No, I think he is asking about -- forgive me, your Honor.

THE COURT: Well I am asking as of March.

Q As of March 1970?

A Well, there was no longer an issue of Christmas printing then. That was way beyond the Christmas season.

Q The same books?

A Yes, but I meant nobody would reprint in March for Christmas of 1969. That is why I am a little confused about the time slot that you are talking about.

Q As of March 1970 it is fair to say that you had information with regard to the distribution of the Christmas list books?

A Yes.

Q With reorders for the Christmas list books?

A Some, yes.

Q And the need to reprint any Christmas list books?

A Yes. May I add something?

Q Not to me you may not.

A All right.

Q Am I correct that you stated to Mr. Mansfield that information regarding the second printing list would have filtered in from Random House and this would have been generally known in Chelsea House?

A In extreme cases; in other words, in best seller cases that should go back.

Q All right. Now you testified that you called Mr. Jackson and told him that you were buying out -- the group was buying out Mr. Oppenheim. Did you testify yesterday that your question to Mr. Jackson initially was "Are there any legal problems" or "What are the legal problems"?

A That was the purpose of my call essentially.

Q And was that your question to Mr. Jackson?

A Yes.

Q What did he respond to that question?

A As far as I remember there were no legal problems in doing this except the regular procedure of assigning contracts and closing the deal, but there were no -- he didn't give me to understand that there were legal intracasies that were unmanageable.

Q In other words, there was nothing as a matter of

law in which you could not buy the stock?

A Yes, so far as he was concerned at that point.

Q Did you ask or did he suggest that he send over legal assistance for the preparation of the documents?

A I don't remember that. That would happen as a matter of course.

Q As a matter of course you would have communicated a request for that kind of legal assistance?

A That is right.

Q As a member of the Royal Koegel firm, is that correct?

A I think that is true.

Q And was it during that conversation that Mr. Jackson either in response to a suggestion of yours or on his own agreed to participate in the buy-out?

A I believe so, yes.

Q Did you suggest it to him?

A To participate in the buy-out?

Q Yes.

A Well, again it is one of those --

Q My first question is, do you recall whether you suggested it to him?

A Did I suggest to him buying the stock at such? I don't think I did.

Q All right.

A I just told him about the deal.

Q You just told him about the deal?

A Yes.

Q Did he volunteer his willingness to participate?

A Well, after he asked me how business was going and I said "fine, we are doing well", and he asked me how many shares I am getting, and what the price was -- I don't remember whether it was fixed as such -- but it came up and I could not testify or swear to you but I suggested to him or he suggested to me, that Jackson would acquire the same number of shares that I had at the same price that I was getting

Q Did you testify yesterday that his words were, in essence "Put me down for so many shares"?

A Something like that, the equivalent of that.

Q Did Mr. Jackson ask you how -- what was the chance for a future underwriting?

A We did not discuss underwriting at all.

Q At that time?

A On that phone call.

Q All right. And did Mr. Jackson ask you how the Christmas list books had sold?

A No.

Q He made no specific inquiry?

A Just a general inquiry, "How is business, Harold?" And I said, "Business is fine, everything was fine".

Q And he said, "Put me down for what you take", is that it?

A Yes, more or less.

Q Did you personally --

A I was surprised --

Q No, I am not asking that. Did you personally, Harold Steinberg, have any further discussions between that date and April 10 with Stuart Jackson about his purchase or his participation in the buy-out?

A Do you mean Stuart Jackson as a member of the firm, in terms of legal aspects of the buy-out?

3-2 Q My question is as follows --

A Yes.

Q -- and it is limited to conversations pertaining to Jackson's participation in the buy-out --

A Yes.

Q (Continuing) Between that conversation on that evening and April 10 when the buy-out closed did you discuss with Mr. Jackson his participation in the buy-out?

A I would tend to say not in any detail. We may have talked on the phone, "How is business?" "Business is wonder-

ful" or whatever the fact was, but we didn't go over again or review the fact that he was buying this stock. I mean, it wasn't that kind of issue.

Q Mr. Steinberg, with regard to his questioning "How is business", did Mr. Jackson ask you any questions at any time other than "How is business?"

A You mean with specific relationship to the business?

Q Yes.

A It may have been phrased in different ways but nothing more specific than that -- "How are things going? How is business? Does it look good?" -- that kind of thing.

Q Did Mr. Jackson on any occasion between the time he said "Put me down for as many shares as you buy" and the date of the closing, on any occasion did Mr. Jackson evidence any reluctance to go through with his participation?

A I didn't hear of any.

Q All right. Now on the question of underwritings, am I correct that the first underwriter with whom Chelsea House spoke was Herzfeld and Stern?

A Herzfeld and Stern, yes.

Q And am I correct, that that underwriter --

A Excuse me, correction, let me modify it. We spoke with many underwriters but Herzfeld and Stern was the one we came to -- at least to some dealer understanding or agree-

ment, and I don't know whether Herzfeld and Stern was the first one.

Q Mr. Jackson's firm was retained, replacing the Rifkin firm sometime early in 1969, is that right?

A Sometime in 1969. "Early" or not, I am not sure.

Q All right. At any time prior to the retaining of Mr. Jackson's firm had Chelsea House spoken to underwriters?

A I think we had.

Q Can you name them?

A No. There were so many. I mean, Wall Street was really heavy in those days, and every three or four days there would be some one in the office looking where to put their money. I am sure we had at least an exploratory discussion with both private investors and underwriters, but who they were I don't know.

Q And after Mr. Jackson's firm was retained you had discussions with either private investors or underwriters?

A Yes.

Q Now Herzfeld and Stern was introduced to you by Mr. Jackson, is that correct?

A That is what I hear, but I don't remember that specific event.

Q You don't remember?

A No. It may well be.

Q Am I correct that you, as one of the principal people in the company, and the other people with a stock interest in the company, felt that the stock should be valued to the public at $10 a share?

A 9 or 10.

Q All right.

A I think we came to an agreement on 9.

Q And this would have been in June or July of 1969?

A That is conceivable, yes.

Q And that of course would have been based in part, at least, on your expectations for the company; right?

A Yes.

Q And secondly, upon the company's prior performance?

A Well I wouldn't limit it only to that, if I may.

Q Was it based upon your expectations, in part?

A Yes, of course.

Q Was it based upon prior performance, in part?

A Yes. It was also --

Q I was going to ask you what else it was based on.

A Well I am going to try togive you the full picture. In addition to the price setting, the st[illegible] in those days, as many people must remember, there was a lot of investigation --

Q Mr. Steinberg, the reason I interrupt you and asked you to answer my question is that I am not interested in

philosophy --

A This is not philosophy --

Q What reasons underlay your specific feeling that the price should be 9 or $10 a share?

A That is a good question, that is specific, and I can answer it.

We had two film programs that we just completed, called The History Machine. It was 50 volumes on American History, made with authentic footage of each contemporary period, under the editorship of Arthur Schlesinger, the prospects for the sale of these films was -- I believe the list price was in the neighborhood of $2500 so it was very good. All our reports were excellent.

Q This was part of expectation?

A Exactly; and the other film program we had some very good people in that, and that was --

Q Part of expectation.

A Right.

Q As disclosed in the prospectus?

A Right.

Q What you were intending to do?

A Right.

Q And what you needed was working capital?

A Yes.

Q As a matter of fact as far back as June or July, 1969 Chelsea House was not exactly cash-rich, was it?

A It was never was, to be absolutely frank.

Q The phrase "deflecting creditors" is not new to you?

A I never heard that phrase until this moment. I know it as "ducking".

Q That is even more direct.

A It is a little more colloquial.

Q So as far back as June and July,and throughout its entire history Chelsea House could never be characterized as "cash-rich"?

A I am afraid that is right.

Q And the basic purpose for going to the public with the stock, aside from establishing a market value for the stock, was to raise needed working capital.

A Exactly.

Q Now Herzfeld and Stern finally said they would bring the stock public rather than at 9 or 10, somewhere around $7. Did they say that?

3-3 A Well, yes. They started at nine and at the last moment they reduced it to 7 because the market was beginning to disappear for new issues.

Q That was known?

A Yes.

Q And that was not satisfactory to the people controlling Chelsea House?

A Well there was a difference of view. It was satisfactory to me, for example, but not satisfactory, for example to Andy Norman or, I believe Mr. Oppenheim, if he was around--I am not quite sure.

Q Am I correct that $7 a share was not satisfactory so far as Mr. Oppenheim was concerned?

A I don't remember him being a consultant volunteer about that price.

Q Now do you recall a proposed underwriting, or at least a conversation about a proposed underwriting with a Herbert Young and Company?

A Yes,but that was much later.

Q That was in the fall of 1969, is that correct?

A Now you got me on the date. It is a matter of record.

Q But it was subsequent to Herzfeld and Stern?

A Yes, definitely.

Q Am I correct that the people at Chelsea House still wanted 9 or $10 a share?

A No, we had made some modification.

Q You had?

A I think we had. We were looking for some kind of a deal. We needed the money. We thought we should be going public, and we discussed -- and I don't remember the details -- the various kinds of packages, and by then new offerings were made with complex warrants and different kinds of stocks, and that was part of the arrangement, and we looked for other possibilities.

Q What was the basic value of the shares of stock as you saw it, in terms of price per share?

A At that time with Young?

Q In September or October?

A With the Young firm I think it came down to warrants and options -- I think it was in the order or $5 or $6 I may be wrong, but that is as I remember it.

Q By the way, did Mr. Jackson participate in the negotiations with Herzfeld and Stern?

A I don't think he participated in the negotiations at all.

Q Was he present at meetings with their representatives?

A There was one meeting that he was present at -- we were at the office of Royal Koegel, and we were finishing up the prospectus with representatives of Herzfeld and Stern, and Stuart walked in and asked "Is everything all right, boys?", or words to that effect, and walked out -- but Grant

Anderson representing the firm was there.

Q Did Mr. Jackson in fact introduce you to the partner or whatever he was at Herzfeld and Stern who first discussed the underwriting with you?

A Mr. Fleming, I don't remember that.

Q You have no recollection?

A I don't have a recollection of that event.

Q Was he present during some of the negotiations with Herbert Young?

A I don't remember him being present at all.

Q Did he not introduce you to Herbert Young?

A No. There were two people -- both father and son. I think one of them, as I remember, introduced us to Herbert Young, because Herbert Young had worked with the elder in some other deal.

Q How about E. L. Aarons and Company? Who introduced you to E. L. Aarons and Company?

A I think that was somebody with Stuart -- I was never introduced to them as such, as I remember. But I think that Stuart meant to be a possibility for an underwriter.

Q Do you recall telling Mr. Mansfield that Mr. Jackson brought E. L. Aarons to Chelsea House?

A I never met anybody from E. L. Aarons. What I meant was metaphorically, he brought them to us as a possible

brokerage house.

Q But was it Mr. Jackson who brought Chelsea House and E. L. Aarons together, in terms of a possible underwriting?

A Yes.

Q And am I correct --

A I think so, yes.

Q And was that subsequent to January 1, 1970?

A I would believe so, yes.

Q And am I correct that E. L.Aarons, that deal, that potential deal with E. L. Aarons was in the process of negotiation between or from sometime subsequent to January 1970 up until May 1970 when E. L. Aarons and Harold Steinberg signed a letter of intent?

A You mean was the negotiation functioning, is that what you are saying, Mr. Fleming?

Q Was the question of a proposed underwriting by E.L. Aaronsbrought to Chelsea House by Mr. Jackson?

A Right.

Q Did that discussion go on for a period of 4 or 5 months very shortly after January 1 until May of 1970?

A I don't think so. What did go on was that -- first of all,this E. L. Aarons deal going public was known then as a best effort thing. It was not a total commitment, and it rested to a great degree on the number of people that

Chelsea House officials and friends and family could provide as possible investors. It was known as a best efforts deal, and we were not very sanguine about its ability, to be frank with you.

Q Were these discussions with E. L. Aarons going on at least in part from time to time during March and April of 1970?

A Frankly, I don't remember ever meeting anybody from E. L. Aarons as such. I might have, but I don't remember. I don't know what they looked like, and I have no idea where they are, but I knew this was a company interested in a best interests deal, and I would send names to Stuart's office -- Stuart Jackson's office of possible investors at that stage. It had none of the seriousness of the Herzfeld and Stern deal.

Q But you knew this in March and April of 1970?

A I would say so, yes.

Q And is it true that Price Waterhouse as a matter of fact was conducting during that period of time what is known as a stub period audit?

A I think so, yes.

Q And that was for the purpose of the preparation possibly of a second prospectus?

A Yes.

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A I think so, yes.

Q And that was for the purpose of the preparation possibly of a second prospectus?

A Yes.

Q Which would require updated financial information subsequent to October 31, 1969?

A Right.

MR. FLEMING: Will you please mark this for identification.

(Document marked Defendant's Exhibit E for identification.)

xxx

3-4

BY MR. FLEMING:

Q I want to direct your attention to the last page of Defendant's Exhibit E for identification, and ask you if your signature, or a copy of your signature appears at the bottom (handing.)

A (After examining) It certainly looks like it, yes.

Q And this is the signature of Edward L. Aarons, is that correct?

A (After examining) That is what the signature says, yes.

Q Will you look at that document and tell me whether you recall signing it?

A (After examining) Yes, it looks like the document that I signed, of the deal we made and with the --

Q That was my only question.

A Okay.

MR. FLEMING: I offer it, your Honor.

MR. GLASS: May I see it, please.

(Mr. Fleming hands.)

- - -

Q Was it toward the latter part of that period?

A I don't remember that. I don't remember signing this document as such.

Q Was it prior to your buy-out of Mr. Oppenheim's sale of stock?

A I don't know that. I really don't know that.

Q What is your best recollection?

A One gets a lot of documents and a lot of letters in the publishing business and a lot of manuscripts and to pull out something from 1970, -- I don't deny that I signed it, there is no question about that, sometime in the winter or spring of 1970 but I can't recall the date.

Q Let me ask you something, Mr. Steinberg. Did you tell Mr. Oppenheim that you were making a deal with E. L. Aarons for a best efforts underwriting at $7 a share?

A When?

Q At any time prior to April 10, 1970.

A I don't remember that. I don't remember telling him that.

Q Now, you are a defendant in the case of Harold Harris against Chelsea House Educational Communications --

THE COURT: Is this going to the voir dire?

MR. FLEMING: I am sorry.

MR. GLASS: I object to the introduce of Defendant's

Exhibit E for identification on the grounds that there is no testimony in the record as to when it was signed and the witness indicates that from his observations the month, both on the first page and the last page, appear to be in a different type.

I ask whether or not counsel for the defendant can produce the original so we can compare it.

MR. FLEMING: We cannot, your Honor. We are not in the possession of the record of Chelsea House. I assume --

THE COURT: Objection overruled, it is received. We have testimony that it was signed sometime from January 1 to June 1 and sometime during the winter andspring. On that basis it would be recieved.

(Defendant's Exhibit E for identification received in evidence.)

xxx

MR. GLASS: Your Honor, sorry I didn't hear your last comment. May I inquire?

THE COURT: I said it appears to the court that the date of May, the word May, was not added at a later date. All that is missing is the actual day of the month.

That does not conflict with the testimony of this witness that he believes it was signed somewhere between the first of January and the first of June.

BY MR. FLEMING:

Q As a matter of fact, Mr. Steinberg, in the end the underwriting efforts with E. L. Aarons fell through?

A That is correct.

Q Shortly after they fell through the company filed in Chapter XI?

A July 2 we filed.

Q Shortly after the E. L. Aarons negotiations, the underwriting fell through?

A Yes.

Q Isn't that right?

A Yes.

Q Now, you have been sued along with Mr. Oppenheim, Mr. Oppenheim, Chelsea House,Andrew Norman, Leon Friedman, Fred Israel and Stuart Jackson, Stephen Wise and Mr. Maybruck and Hansen by Mr. Harold Harris in connection with these transactions?

A Yes.

Q Mr. Harris was a participant in the purchase of Mr. Oppenheim's shares?

A Yes.

Q Do you recall --

MR. FLEMING: I will as the Court to take judicial notice -- excuse me, your Honor.

You filed an answer to Mr. Harris' complaint on a pro se basis, meaning that you were representing yourself, is that correct?

A I believe so, yes.

MR. FLEMING: Your Honor, I would ask the Court to take judicial notice of a complaint in 1970 Civil 5117 filed in this district and I am referring to paragraph 36 of it.

Q There is an allegation of Mr. Harris that upon information and belief prior to April 7, 1970 --

A Can I ask where this is from, Mr. Fleming?

Q Mr. Harris' complaint?

A I see.

MR. GLASS: Your Honor, I have no objection to the Court taking judicial notice of the fact that the complaint has been filed but the allegations of the complaint do not constitute evidence in this court.

THE COURT: It isn't received so far. I take it there was some response.

MR. FLEMING: That is correct.

THE COURT: This is to put it in the proper framework.

Q I will show you for your convenience, Mr. Steinberg, a copy of the amended complaint which we have in our file on paragraph 36 thereof.

Paragraph 6 thereof states that thereupon information and belief prior to April 7, 1970 certain of the defendants named in this paragraph were officers and directors of thedefendant Chelsea House Educational Communications, Inc. as follows, Harold Steinberg, Stuart Jackson, Andrew Norman, Stephen Wise, Fred Israel. The defendants Leon Friedman, Richard Maybruck and Hansen were active in the affairs and management of the corporate defendant and all of the defendants named in this paragraph were in fact named in the paragraph and that would include Stuart Jackson, would it not?

A Yes.

Q Was he in effect and complete control of the corporate defendant and had the knowledge of all of its affairs?

A It says that, yes.

Q I show you this copy and ask you if you recognize it as a copy of your answer to that complaint filed pro se?

A I can't read this, the Xerox is very bad. This is in August as you can see.

Q Do you recognize it as a copy of your answer?

A It could be, yes, without reference to the second page which is almost illegible.

Q But let me read it to you and ask you if in fact

you did give this answer to paragraph 36 which I have just read, paragraph 3:

"Admit to the allegations of paragraphs 5, 13, 20, 22, 29, 32 and 36. But denies that the defendant Leon Friedman, Richard Maybruck and Hansen were active or in control of the affairs and management of the corporate defendant."

Is that correct?

A That is what it says.

Q You did not deny that Mr. Jackson as alleged was in effective, complete control of the corporate affairs of the corporate defendant and had knowledge of all its affairs, you didn't deny this?

A No.

Q You say this answer was based upon your personal knowledge as an officer of Chelsea House during this period in question?

A I don't know if the answer is as simple as that, Mr. Fleming.

MR. FLEMING: I have nothing further, your Honor.

MR. GLASS: May I borrow that complaint and answer?

4-2 REDIRECT EXAMINATION

BY MR. GLASS:

Q Are you a practicing attorney?

A No, sir.

Q Are you admitted to the bar of the State of New York or any other bar?

A No, I am not.

Q Mr. Fleming in his cross-examination pointed out that in your answer you admitted that Mr. Jackson was active in the business affairs of Chelsea House. Is this a fact?

A Mr. Fleming also said so but it isn't a fact.

Q It is not a fact? Isn't it your testimony today as it was yesterday that Mr. Jackson never participated in the day to day operations of the company?

A Yes, it is.

Q And isn't it a fact as point out that Mr. Jackson had no voice in the management of your company whatsoever at any time?

A As a functioning practical matter, no.

Q There is no question in your mind about that, is there?

A No.

MR. GLASS: May we have this document marked for identification as Plaintiff's Exhibit 4, I believe.

xxx (Plaintiff's Exhibit 4 marked for identification.)

Q Do you recall Mr. Fleming cross-examining you questioned you about a brokerage fee or commission to the person in your employ who supposedly had something to do with

Mr. Oppenheim's sale of stock, Poten?

A Yes.

Q I believe you mentioned that Poten may have received an option or something of the like?

A I don't know what the nature of the compensation was, I don't remember that. But I do remember talking of giving him something, probably in the form of stock or option.

Q Mr. Steinberg, I show you what has been marked as Plaintiff's Exhibit 4 for identification and ask you to read this document and see if you can identify it.

A Yes, this looks like a document that --

Q Let me ask you, does reading Plaintiff's Exhibit 4 for identification refresh your recollection as to what Poten received in connection with the Oppenheim transaction?

A It spells it out very clearly, as I said I assumed that we were giving him something. I remember giving this and this spells out what each contributed toward that, what each stockholder contributed toward the presentation.

Q Did you sign this document?

A Yes, I did.

MR. GLASS: I offer Plaintiff's Exhibit 4 for identification in evidence.

MR. FLEMING: I have no objection.

THE COURT: Received in evidence.

xxxx (Plaintiff's Exhibit 4 for identification received in evidence.)

Q Looking at Plaintiff's Exhibit 4 in evidence, Mr. Steinberg, is it not a fact that Mr. Jackson was not a party to that agreement, that his name was crossed out and he did not sign it?

A Well, I notice here it is not a question of his name being crossed out, his name doesn't appear at the signatures.

Q Look on the first page and his name is crossed out, not typewritten, yes. Several names are.

MR. FLEMING: My understanding is that is correct and there is no dispute on that.

THE COURT: I just observed that.

Q Getting back to the answer that you filed in response to paragraph 36 of Mr. Harris' complaint, why did you fail to except in your answer to the allegation that Mr. Jackson was a daily participant in the business affairs of the company?

MR. FLEMING: That is not the allegation.

MR. GLASS: I will read it specifically.

THE COURT: Are you nearly through with this witness?

MR. GLASS: Yes, I am. I just want to go through one more point.

MR. FLEMING: Here is the allegation.

Q Referring you again to paragraph 36 of the Harris complaint, it says that upon information and belief prior to April 7, 1970, certain of the defendants named in this paragraph were officers and directors of the defendant Chelsea House Educational Communications Incorporated as follows and included is Mr. Jackson, secretary and director and legal counsel to the company.

And that the defendant Friedman, Maybruck and Hansen were active in the affairs and management of the corporate defendant and that all of the named defendants in this paragraph were in effective and complete control of the corporate defendant and had knowledge of all of its affairs.

And my question to you is why did you include Mr. Jackson in that group of all of the defendants?

A I am really glad you asked that question, because as it was pointed out by Mr. Fleming, I was pro se and I couldn't afford a lawyer at the time. So I had to respond to this myself.

It was an elaborate, complicated complaint with many numbers and many points in it and that point seemed to be almost, to me, not substantive at the time and just named

MR. GLASS: Yes, I am. I just want to go through one more point.

MR. FLEMING: Here is the allegation.

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And that the defendant Friedman, Maybruck and Hansen were active in the affairs and management of the corporate defendant and that all of the named defendants in this paragraph were in effective and complete control of the corporate defendant and had knowledge of all of its affairs.

And my question to you is why did you include Mr. Jackson in that group of all of the defendants?

A I am really glad you asked that question, because as it was pointed out by Mr. Fleming, I was pro se and I couldn't afford a lawyer at the time. So I had to respond to this myself.

It was an elaborate, complicated complaint with many numbers and many points in it and that point seemed to be almost, to me, not substantive at the time and just named

officers and I thought it was proforma and I did not give it much thought. The most horrible thing I could say about this myself was that it was human error and what I saw of the complaint was that these were the officers and I said yes they were. Not only Mr. Jackson, Steve Wise was not in control of the company as such and was not an active participant in the company in this way. So that it wasn't true about him.

It was one of those sweeping parts of a long complaint in which I overlooked every minute detail and to me this point was a detail. It was the officers and I didn't go into all the qualifications of the degree of control.

MR. GLASS: Your Honor, I find in looking at my notes that it will take me more time than I indicated.

THE COURT: How much longer?

MR. GLASS: About 15 minutes, if you want me to continue.

THE COURT: All right.

Q Now, getting back to the Christmas list --

A Yes.

Q Am I correct in stating that you had an agreement with Random House in which Random House distributed the books on the Christmas list to its retail customers; is that the way it worked?

A You are correct in part. It wasn't just for the Christmas list.

Q Now I am talking specifically about the Christmas list because that is what Mr. Fleming directed your attention to.

A That was part of the deal, yes.

Q So that in order for Random House to be able to give you a report, it had to first hear from its retail customers, correct?

A Definitely.

Q In terms of your business is it not correct that Christmas sales are not over until Christmas Eve?

A Certainly.

Q Is it not also also correct that following Christmas there is a period of time in which Random House has to hear back from its retailers throughout the United States?

A That is true.

Q And is it also not a fact that you really didn't know the true status of the Christmas list until you obtained the print out from Random House, which you indicated was received in May of 1970?

A That is one of them. We might have gotten one earlier but no one could know.

Q How many retailers were involved in this distribu-

tion?

A General information about bookstores, just straight bookstores without others, there might be 5 or 6 thousand minimally.

Q So that Random House would have had to receive reports from thousands, at least 5000 retailers before it could report to you?

A Well, yes, true.

Q You did mention I believe to Mr. Fleming that there was one trade book that you had heard from Random House about, the Buck Rogers book?

A Yes, sir.

Q A trade book?

A Yes, sir.

4-3

Q What was the selling price of that book?

A It started out as I remember now as $12.50 --

Q In Christmas 1969 what was the price?

A $12.50.

Q Were you required tc reprint that book?

A Yes.

Q Did Random House ask you to do so?

A Yes.

Q How many reprints did they ask of that $12.50 number?

A We ordered 25,000.

Q And I take it you ordered them with the expectation that they would be sold during this 1969 Christmas season?

A We had a sales meeting I believe in Puerto Rico at the invitation of Random House. We were told that the book is selling very well and some people told us that it is one of their best sellers and, as a result, because of their urging, Fred Israel called from Puerto Rico or Bermuda -- from Puerto Rico I believe it was -- to our office and told our production man at the time whoever was responsible, to get 25,000 more books ordered from the printer and they were ordered and delivered, after a period of time.

Q But you did receive unofficial information about the book in January, February and March that it wasn't selling as well as they had led you to believe originally, isn't that correct?

A Repeat that question again.

Q You did receive information --

THE COURT: Are you testifying now or repeating some testimony?

MR. GLASS: I will withdrawthat.

Q Did you receive any information from Random House in January, February or March, either by way of print out or telephone conversations, with respect to the way the Buck

Rogers sales were going.

A We started to get some feedback by telephone or oral communications that in February they weren't selling as well as they had in Christmas which can be expected because after Christmas sales drop off.

MR. FLEMING: I move to strike out which is expected.

THE COURT: That is his testimony. I will let it stand.

Q Mr. Steinberg, directing your attention again to January, February and March of 1970, I believe you testified in response to Mr. Fleming's cross-examination, that it was a fact that Price Waterhouse during that period was working on another stub period, is that not correct?

A I can't remember the exact period that Price Waterhouse came to work on the stub period. It might have been that time.

Q During January, February and March, did you have conversations with Mr.Jackson with respect to this Price Waterhouse work, if you recall?

A Nothing specific that I remember.

Q Did you have any discussion with Mr. Jackson concerning the financial statements of the company for the period subsequent to October 31, 1969 in connection with this underwriting?

A Do you mean the best efforts offer?

Q Yes.

A The only discussion I had with Jackson in this context is is it possible to get investors and I would occassionally send letters with names, giving him a possible investor.

Q What did he say to you, did he ask you for any information?

A "How is business?"

Q Did he ask you for any financial information, if you recall?

A Do you mean like specific sales of books or films?

Q No.

A The answer to that is no, any specifics on sales of books. Mr. Jackson as far as I remember, the whole drift of the relationship was at best or at least generally, I mean my feeling about Mr. Jackson is that he was involved with a lot of big companies on important matters.

We were a small company and I just didn't want to bother him is what actually happened. If there were legal questions I discussed them with Anderson.

Q In January, February and March when you were continuing to discuss the possibility of either a private placement or an underwriting, did you have any discussions with

Jackson in which he asked you for information in connection with the projects?

A Not specific projects, specific books --

Q I don't mean books but underwritings, investors, did he ask you for updated information about the company's financials or otherwise?

A What I remember is Jackson asking me occasionally how's business, how are things going, is the film project doing well.

Updated financials, he may have but I don't remember it specifically and I don't remember responding to that. But we were developing information for the new possible underwriter, Price Waterhouse was presumably preparing a stub period. Exactly when that was happening I don't know but that is all I remember about that.

Q Do you remember that Jackson was seeking from you additional financial information so he could continue to attempt to bring underwriters to your attention during this period of January, February and March 1970?

A I do know that in terms of any underwriters who came in, the big nuisance to go through the whole thing and it was a standard request. If you are going to get an underwriting to see how you have done in the last six months and a year. We had to have the financial reports which went with

how are things going and what had been happening up to then. As far as information in any underwriting one needed financial reports.

Q Did Jackson ask you for this financial information if you recall?

A I just can't recall any specific requests as such except for the conventional request for reports when you are dealing with an underwriter.

Q Do you recall requests for reports from Jackson?

A Yes, any underwriting deal that came up, and there were many, there was always a request for financials.

Q Did Jackson make those requests for reports during January, February and March of 1970?

A I can only presuppose if he brought in, so to speak, E. L. Aarons, that same act meant have you any financials? Give them to these guys. Get Price Waterhouse working and get another stub period.

Q Because you didn't have interim financials, intra-company?

A No.

Q Talking about your financial books and records --

A Yes, sir.

Q I believe that yesterday you discussed with Mr. Fleming the manner in which the books were kept. Did you keep

your books on a cash or an accrual basis?

A Well, there were two things. It is one question the answer is both.

MR. FLEMING: I did not ask the question, Mr. Glass did and it was answered and he said it was on an accrual basis.

THE COURT: You received credit for it.

MR. GLASS: Thank you, Mr. Fleming.

A The answer is that on the day to day basis, talking about it to our bookkeeper today, we kept it on a cash basis. But the accountants kept it on an accrual basis.

When they came in they would review it, they would look into what the contracts were underway, what the debts were, what we owed, et cetera. But as far as, I am told, the actual day to day daily bookkeeping operations, such as cash, coming in and out, it was on a cash basis.

4-4 Q So that am I correct in stating that if one looked at your books in January, February and March of 1970, the liabilities which had not been paid would not be reported in your books on a cash basis?

A Not until the balance sheet was done by the accountants. You can't tell and go in at day one and say what are your total liabilities unless the accountants gave us these figures.

Q Am I correct in stating on the cash basis the way your books were kept one could not go in in January, February or March of 1970 and determine the value of the work in process?

A The books didn't reflect contracts, didn't reflect distribution deals, didn't reflect any of those things.

Unfortunately we have an excellent bookkeeper but this was at the early stage of the company and we had not gotten sophisticated enough.

Q Am I correct in stating that until the auditors came in and made their adjusting entries and included those items not on the books, one could not from looking at the books in January, February or March determine what the financial state of the company was at that time?

MR. FLEMING: I object to that.

THE COURT: I will sustain the objection. Where are the books? The books will speak for themselves. The books are the best evidence.

MR. GLASS: May I have a moment, your Honor?

(Pause.)

MR. GLASS: Thank you, your Honor, I have no further questions.

RECROSS-EXAMINATION

BY MR. FLEMING:

Q During the period of time from January 1, 1970 up until you filed Chapter XI, am I correct that Royal Koegel and Wells remained your attorneys?

A Yes.

Q Whether the liabilities were recorded or not, the bills were in Chelsea House Company physically billed?

A Definitely, yes.

MR. FLEMING: Thank you.

(Witness excused.)

THE COURT: We will take a short recess.

(Recess.)

THE COURT: Let me ask for my information: Have the parties exchanged trial briefs?

MR. FLEMING: My understanding, your Honor, is that we were willing to but the plaintiff was not. We are still willing to.

MR. GLASS: We have not exchanged briefs but we are prepared to, if the Court feels it necessary.

THE COURT: Well,I am going to receive everything on the assumption that both sides will do that.

MR. GLASS: We have not received copies of their brief but we will supply them and exchange them.

THE COURT: I suggest that you supply them with a copy of the supplemental brief that you may file, and any other brief.

MR. GLASS: Thank you, your Honor.

MR. FLEMING: It may not be material, your Honor, but I do want to make it a matter of record that we did offer initially to exchange briefs.

THE COURT: All right.

MR. GLASS: Thank you, your Honor.

Plaintiff now calls Harold Harris.

MR. FLEMING: If your Honor please, before this witness is sworn, I was wondering if your Honor would deem an offer of proof as to the relevance of Mr. Harris' testimony.

So far as I know he was not in communication with Mr. Jackson, although I know he was one of the purchasers. I fail to see --

THE COURT: Maybe we will get an offer of proof and a concession.

MR. GLASS: Yes, your Honor. The plaintiff seeks to prove through this witness that, A, he never received a copy of the Oppenheim memorandum as a purchaser; and B, that he --

THE COURT: I do not know that that would be admissible.

MR. GLASS: It shows a course of conduct on behalf of the defendant, showing scienta, which is one of the essential elements in a 10-b case in this action.

THE COURT: I will wait to see what the questions and answers are.

H A R O L D H A R R I S, called as a witness by the plaintiff, was first duly sworn and testified as follows:

THE COURT: I take it that is the sole purpose. He is not going to be a lengthy witness.

MR. GLASS: No, he is not, but it is not the sole purpose. One of the other elements in this case is whether or not Mr. Jackson in the exercising of reasonable care

could have determined what the true state of affairs was. This defendant -

THE COURT: Well, we will wait and see what the questions are.

DIRECT EXAMINATION

BY MR. GLASS:

Q Mr. Harris, where do you reside?

A Massapequa, Long Island.

Q Did there come a time in March of 1970 when you became employed by Chelsea House Communications Inc.?

A Well, it might have been April 1. In any event, it was between March 15 and April 1.

Q In any event, it was before April 10, 1970.

A That is correct.

Q Did you purchase any shares of Chelsea House Communications, Inc. from Jack Oppenheim?

A From Jack Oppenheim directly or in conjunction with -- well, I purchased those shares, yes.

Q How many shares did you buy?

A 35,000.

Q At $3 a share?

A That is correct.

Q And was that pursuant to an agreement dated April 7, 1970?

A I don't know the exact date of the agreement but I think the entire signing took place on April 10.

Q That is correct.

MR. GLASS: Your Honor, may we have this document marked for identification as Plaintiff's Exhibit 5.

(Document marked Plaintiff's Exhibit 5 for identification.)

xxx

BY MR. GLASS:

Q Mr. Harris, I show you this document which has been marked as Plaintiff's Exhibit 5 for identification and ask you if this refreshes your recollection as to the date of the agreement that was signed on April 10, 1970 (handing)?

A (After examining) It looks like the agreement.

Q Are you described as one of the purchasers in that agreement?

A Well, there is a spot here for my name, for my signature, and it is in the beginning, yes -- here I am (indicating).

Q And pursuant to this agreement did you in fact purchase shares from Mr. Oppenheim?

A Yes, I did.

Q And prior to your purchase had you ever met Mr. Oppenheim?

A Yes.

Q And did you ever have any conversations with him?

A Yes.

Q And did those conversations -- in those conversations did you discuss the business of the company with him?

A Not really.

Q Did he ever offer any information to you about the business of the company?

A Not too much.

Q Did you attend a closing that took place on April 10, 1970?

A Yes.

Q And was Mr. Oppenheim present?

A Yes.

Q At that time?

A Wait a minute. I think he was present. I am a little hazy about it, but I think he was present.

Q At any time prior to your purchase of these shares did Mr. Oppenheim ever offer to discuss the business or financial condition of the company with you?

A We just talked rambling about publishing in general. He did say that the company had excellent products.

Q Excellent products?

A Yes, which I was aware of.

Q Did he tell you anything else about the company?

A Well, he did tell me if I was interested in buying stock, there was a stock buying group getting together to buy his stock.

Q Did he tell you anything else about the company other than that they had excellent products, if you recall?

A Well, he thought there might be better management.

Q Did he discuss with you at all the financial condition of the company?

A Not to any extent. I mean that company was -- well, while things were going on, I didn't even have an office so I was running in and out.

Q Let me ask you this question, prior to your purchase did you speak to any other officer or director of the company?

A Yes.

Q Who?

A I spoke to Harold Steinberg.

Q The president?

A That is right, and Andy Norman.

Q Another officer?

A Yes.

Q Principal stockholder?

A Right.

Q Did they tell you anything about the business

condition of the company?

A Oh, yes.

Q Can you tell the Court what they said?

A Before purchasing the stock --

Q Well, specifically -- I would like to withdraw that question -- what did Mr. Steinberg say to you, if anything.

A Well, I asked him how much business the company did a year, and he told me that they were doing in the neighborhood of a million and a half to a million and three quarters a year business, and I knew that they had done reprint business, which was what the Sears Roebuck catalog was, and I had asked them what the net profit was in the business.

Q And what did he tell you?

A He told me 20 percent.

Q When did he tell you this?

A Many times.

Q Did he tell you it in March of 1970?

A Oh, yes.

Q And was Mr. Norman present when these statements were made to you?

A Well I asked Mr. Norman to verify this. I said, "Is that true?"

Q And did he verify it in March of 1970?

A Yes, he did.

Q Did Mr. Steinberg or Mr. Norman ever give you any information of an adverse nature concerning the business of the company or its prospects?

A Never.

Q By the way, when was the first time you met Stuart Jackson?

A It was well after the April 10 signing. I don't remember exactly but it might have been at the end of April or the beginning of May.

Q I believe you were in the courtroom when reference was made to paragraph 36 of your complaint?

A Yes.

Q With respect to Mr. Jackson?

A Yes.

Q And I believe that allegation was on information and belief?

Do you have any specific knowledge or did you at that time have any specific knowledge of Mr. Jackson's precise role in Chelsea House?

A Well I heard talk about him from both Norman and Steinberg, that he was a lawyer, that he was legal counsel.

Q Did they tell you that he was active in the day-to-day management of the company?

A No, no.

MR. GLASS: I have no further questions. Thank you.

5-2 CROSS-EXAMINATION

BY MR. FLEMING:

Q Did Mr. Norman or Mr. Steinberg tell you that Mr. Jackson as a director and as a partner in the firm of Royal Koegel and Wells had knowledge of the affairs of Chelsea House, as alleged in your complaint?

A That was in my complaint, yes.

MR. GLASS: Your Honor, I don't believe that is what paragraph 36 says.

MR. FLEMING: "All of the defendants named in this paragraph were in effective and complete control of the corporate defendant and had knowledge of all its affairs."

A I couldn't say whether he had knowledge of all the affairs or not. I didn't draw up the complaint. My attorney drew it up, and I went through it, and I presume when he brought the suit he sued anybody that might have any bearing on the case, and I presume that is the way these legalisms are done.

Q There is another legalism in here, that you were informed, told by someone that the stock was going to be offered to the public at a price of $7 per share?

A That is correct.

Q Mr. Steinberg told you that?

A Both Mr. Steinberg and Mr. Norman.

Q This was prior to your entry in the purchasing group?

A That is right.

MR. FLEMING: May I have just one moment, your Honor.

(Mr. Fleming confers.)

BY MR. FLEMING:

Q You did testify that Mr. Oppenheim, according to your recollection, told you he did not like the mangement of the company, the management was bad -- words to that effect?

A Well, he did not say "bad".

Q Did you so testify?

A Pardon?

Q Did you so testify this morning?

A He would have liked to have gotten a really great man like Richard Goodwin who would really bring the company up.

Q Mr. Harris, did you testify this morning that Mr. Oppenheim through you criticized the management of the company?

A Just a few minutes ago?

Q Yes.

A Yes.

MR. FLEMING: I have no further questions.

MR. GLASS: Thank you, Mr. Harris.

THE COURT: You are excused.

(Witness excused.)

MR. GLASS: The plaintiff calls C. Grant Anderson.

C. G R A N T A N D E R S O N, called by the plaintiff, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GLASS:

MR. GLASS: May I proceed, your Honor?

THE COURT: Yes, please.

Q Where do you reside, Mr. Anderson?

A I live at 275 Nassau Avenue, Manhasset, New York.

Q And what is your profession?

A I am an attorney, a member of the bar of the State of New York.

Q And how long have you been practicing your profession?

A I have been practicing since 1965.

Q With whom are you associated?

A I am a partner in the firm of Rogers and Wells.

Q And how long have you been with Rogers and Wells?

A Since May of 1969.

Q And in 1969 Rogers and Wells was known as Royal Koegel and Wells, is that not correct?

A That is right.

Q And in 1969 were you an associate or a partner?

A In 1969 I was an associate at the time.

Q As well as in 1970?

A That is right.

Q Did your firm represent Chelsea House Educational Communications Inc. in 1969?

A It did.

Q And do you recall when you first worked on legal matters in connection with Chelsea House?

A That would have been in May of 1969 when I first joined the firm.

Q And what specifically were you called upon to do?

A I was called upon to prepare a registration statement with respect to the prospective offering of Chelsea House stock to the public.

Q Is this a registration statement to be filed with the United States Securities and Exchange Commission?

A That is correct.

Q And with whom did you primarily work in Chelsea House?

A Well, in the drafting of the registration statement

I primarily consulted with Harold Steinberg, who was the president of the company.

Q Did you work at all with Mr. Norman?

A I attended some large meetings at which Mr. Norman was present, but primarily it was with MR. Steinberg.

Q And when you first started to work on the registration statement was there an underwriter involved?

A At that time there was, Herzfeld and Stern.

Q Did you attend meetings between Chelsea management and representatives of the underwriter, if you recall?

A I recall one meeting involving thoseparties. That is about the only meeting I can recall.

Q Was that in 1969?

A There was a meeting in 1969, yes.

Q And was that July, if you recall?

A Around July of 1969.

Q Was Stuart Jackson present?

A Mr. Jackson I don't believe was present for the whole meeting. I think he was in and out of the meeting.

Q Do you recall what was said at that meeting?

A Well I don't recall the exact lanaguage or statements that were made but I remember that the upshot of the meeting was that Herzfeld and Stern was withdrawing as underwriter of the offering.

Q Well in addition to yourself did anyone else work on the registration statement?

A From Rogers and Wells only I worked on the preparation of the registration statement, although I did consult with Mr. Jackson as partner in charge, and I also showed him the final draft of the registration statement for his review.

Q Do you have any knowledge as to the facts and circumstances under which Mr. Jackson became the secretary and a director of Chelsea House?

A No, I have no direct knowledge.

Q Did you personally check out management's representations in the registration statement?

A Well, I conducted what I would call a typical due diligence review, wherein I familiarized myself completely with all of the material contracts that the company had entered into.

I reviewed all of the corporate records, the minute books, the charter and the by-laws, and so on; the stock record book to see who the stockholders were.

Then I also interviewed Mr. Steinberg as the chief executive officer and had discussions with -- numerous discussions with the accountants, Price Waterhouse.

Q Did you ever discuss the results of what I characterize as your due diligence investigation with Mr. Jackson?

A I did not report to him the details of my due diligence review because there was nothing that came to my attention that would be in any way other than routine.

Q In other words, there were no problems, is that what you are saying?

A There were no problems.

Q After the Herzfeld and Stern negotiations was aborted, Mr. Anderson, did you participate in any other discussions with any other underwriters?

A No, I did not. I did not participate in any discussion with any underwriters per se, no.

Q Well, did you have any discussion with respect to any private placement?

A I did have -- I attended one meeting with Bache and Co. which was at one time proposing to privately place the company's securities.

Q Did Bache and Company agree to participate in the private placement, if you recall?

A My recollection is that they withdrew at some point in January of 1970, I believe.

Q Was Oppenheim present -- Mr. Oppenheim present at that meeting?

A I believe he was.

Q When was the next time that you saw him?

A I think the next time that I saw Mr. Oppenheim was in March of 1970, at which time he was selling certain of his stock -- several thousand of his shares of stock to another individual, and he had come to my office to handle the details of the transfer because we were counsel to the company.

Q And what was your next contact?

A The next contact that I can recall was in April of 1970 at the signing and closing of the buy-out.

Q With respect to that Oppenheim sale, did you have any discussions with Mr. Jackson with respect to it?

A Well, he was the one that first informed me that the sale was going to take place,

Q What did he say to you, if you recall?

A He said that there was going to be a transaction in which Oppenheim was going to sell out his holdings in Chelsea House, that Mr. Jackson himself was going to be a participant in the sale; that he wanted me to prepare the papers and that I should get in touch with Mr. Steinberg with reference to the details of the transaction in order that I might draw the papers.

Q Did you call Mr. Steinberg?

A I did.

Q And did you have a conversation with him?

A Yes, I did.

5-3 Q Can you tell the Court what the substance of the conversation was, if you recall?

A The substance of the conversation was that there was to be a buy-out of Mr. Oppenheim's shares.

He told me -- I believe he told me the identity of the first group of purchasers and the number of shares which each purchaser was going to purchase, and I think he told me that it was going to happen rather quickly and I should get in touch with Mr. Oppenheim's lawyer and coordinate the details.

Q Do you recall the name of the lawyer?

A Mr. Oppenheim's lawyer was Ernest Hammer.

Q What firm was that?

A I think at the time he was a partner in the firm of Hallisey,Goldber, and Hammer.

Q Going back a little bit, after the Herzfeld and Stern underwriting aborted, and commencing in January of 1970, up to the date of this stock closing, did any problems concerning the financial condition or business future of Chelsea House come to your attention in any way?

A No.

Q Well, prior to the stock purchase did you see Mr. Oppenheim at your office during the month of March?

A Yes.

Q And was that the situation where he came up to see you about stock transfer taxes?

A Yes.

Q Now in connection with the stock purchase did the people buying the Oppenheim shares change from time to time, or were there any added?

A Yes, I believe that the group expanded from the original group to include -- I don't know -- four or five additional people.

Q And did you have a conversation with Mr. Hammer, Mr. Oppenheim's attorney, with respect to the identity of the persons buying the shares?

A Well, I am sure I must have discussed it with him who the people were, although I don't recall any specific conversations.

Q Did you prepare the agreements?

A Yes.

Q And did you have any discussion with Mr. Hammer about the terms of the agreements?

A Well, I think basically I prepared the agreements, and there is a possibility that he may have brought up certain points which he wanted to be included or may have objected to certain points that I put in, and to that extent there were

discussi[illegible]out I don't think it involved anything major.

Q In other words, you did not participate in the negotiations of the purchase price or the terms of payment?

A That is correct.

Q Did you participate in any discussions between Mr. Oppenheim and Mr. Hammer and the purchasers of these shares with respect to the terms of the deal?

A No.

Q Was there a closing schedule for April 7, 1970?

A I am a little hazy on that. I know there was a signing schedule for April 7, and I believe the contract was signed on the 7th.

Q In connection with these documents that you prepared did you prepare any voting trust agreements with respect to the stock purchasers?

A No.

Q Did you prepare any agreements between the stock purchasers with respect to the possible sale of the shares or the use of any proceeds that might be derived from any such sale?

A No.

Q Is the principal agreement -- withdrawn.

I show you Plaintiff's Exhibit 5 for identification and ask you if that is a copy of the purchase agreement that

was ultimately signed, if you recall (handing)?

A Yes.

Q I direct your attention to paragraph number 1 on page 2 which apparently says "Seller hereby agrees to sell to each of the purchasers and each of the purchasers individually but not jointly hereby agree to purchase from seller that number of shares of Chelsea House "-- is that your language?

A Yes.

Q And was that your understanding of the terms of the deal that each person was acting individually and not jointly?

A Yes.

Q Did anyone ever give you any instructions or any information or documentation to lead you to a contrary belief that the purchasers were anything other than individual?

A Definitely not.

Q Did your firm represent all the purchasers?

A Well to the extent that I thought about it at the time -- and I didn't really give it too much thought -- I only considered myself to be representing Mr. Jackson.

Q By the way, was Mr. Jackson present at either the April 7 meeting or the April 10 closing?

A Not to the best of my recollection, no.

Q Do you know where he was?

A I believe -- I don't know where he was on the 7th. I believe on the 10th he was at Rogers and Wells -- at least for part of the day. I don't know where he was at the particular time of the closing.

Q As matter of fact, did you not execute the purchase agreement as his attorney in fact?

A Yes, I did.

Q And did you not also execute the two promisory notes which were given by him as his attorney in fact?

A Yes.

Q And was that with the full knowledge of the purchaser -- of the seller,was it not?

A Yes.

Q Mr. Hammer and Mr. Oppenheim were aware of the fact that you were signing?

A Well I mean it is clear from my signature, they saw my signature.

Q Do you recall -- the document you have in front of you is not signed. Do you recall the manner in which you signed the final document?

A This is signed.

Q Oh, this is signed?

A Yes, "Stuart Jackson by C. Grant Anderson, attorney in fact."

Q And is that the same way that you signed the promisory notes?

A That I don't recall.

MR. GLASS: Your Honor, at this juncture I would like to offer Plaintiff's Exhibit 5 into evidence.

MR. FLEMING: I am sure I have no objection but I just want to look at it.

MR. GLASS: Subject to it being accurate.

THE COURT: Yes.

xxx (Plaintiff's Exhibit 5 now marked in evidence.)

BY MR. GLASS:

Q Did Mr. Jackson, to your knowledge, participate in any other discussions with Mr. Hammer with respect to the terms of the agreement you were drawing up?

A No.

Q And when was the first time, if ever, that you became aware that Mr. Oppenheim had written a memorandum in March concerning the company and its business affairs?

A To the best of my recollection I became aware of that sometime after Chapter XI proceedings had been filed, and after the controversy between the purchasers and Mr. Oppenheim had developed, which would be in the summer of 1970.

Q No one at Chelsea House prior to that time had

ever told you that Mr. Oppenheim had written a critical memorandum concerning the business affairs of the company?

A No.

Q When was the first time, if ever, that you learned that Mr. Oppenheim had written a letter to Mr. Steinberg advising that he was resigning as an officer of the company effective in March of 1970?

A Well, I believe that only came to my attention in early April, at which time I was preparing the papers for the Oppenhim buy-out.

Q Is there a provision in the agreement where Mr. Oppenheim resigned as an officer and director (handing)?

A (After examining) There is a section 3(e) which says that as a condition to the obligation of the purchasers that Mr. Oppenheim "deliver his resignation as an officer and director of the Company."

Q So is it a fact that at the time you drew this agreement you were not aware that Mr. Oppenheim had already written a letter resigning as an officer of the company?

A So it would appear.

Q And is it not also a fact, Mr.Anderson, that during this period of January, February and March you were the attorney from Rogers and Wells that was working on the registration statement; in the months of January, February and

March of 1970 you were still working on the Chelsea House accounts, were you not?

A Oh, on the account, yes.

MR. GLASS: May we have this document marked as Plaintiff's Exhibit 6 for identification.

xxx (Plaintiff's Exhibit 6 marked for identification.)

Q Mr. Anderson, I show you what has been marked as Plaintiff's Exhibit 6 for identification and ask you if you can identify this document?

A This is a copy of the unanimous consent of stockholders of Chelsea House, dated June 16, 1969.

Q Did you prepare that document?

A Actually I don't believe that I did.

Q Was it prepared inhouse?

A It was.

Q By Mr. Leon Friedman?

A Inhouse? I am sorry. I believe it was prepared in our firm by Bruce R. Tuttle, Jr.

Q Was it signed by all of the stockholders?

A It is signed by all of the stockholders who are enumerated at the end.

Q Including Mr. Jack Oppenheim?

A That is correct.

Q Am I correct in stating that this document was signed in lieu of a formal meeting of stockholders?

A That would be right.

MR. GLASS: Your Honor, I offer 6 for identification

in evidence.

THE COURT: We will give Mr. Fleming a chance to read it over and we will adjourn until two o'clock.

(Luncheon recess taken until 2 p. m.)

kpl

AFTERNOON SESSION

2.00 P.M.

C. GRANT ANDERSON, resumed.

MR. FLEMING: Your Honor, we have no objection to that document -- I forget the number or the letter.

MR. GLASS: No. 6.

MR. FLEMING: We have no objection to Plaintiff's Exhibit 6.

THE COURT: What was it?

MR. GLASS: It is a consent by all the stockholders to issue Mr. Jackson 12,500 shares of stock, signed by all the stockholders.

May I have it, sir?

MR. FLEMING: I think I gave it back to you, Mr. Glass.

THE COURT: Was it withdrawn?

MR. FLEMING: No. At the recess I was about to read it -- it was a quarter to one, and I was to read it during the recess. I have no objection to its admission.

THE COURT: Just for my own information because I haven't seen it, is this the original agreement about the gift of the stock?

MR. GLASS: No -- oh, that is the transaction we are talking about, correct, your Honor.

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THE COURT: This is not a subsequent gift of the stock?

MR. GLASS: No, your Honor.

THE COURT: Or payment by way of stock?

MR. GLASS: No.

THE COURT: This is what we have been talking about before?

MR. GLASS: Yes.

MR. FLEMING: The same transaction.

THE COURT: All right.

xx (Plaintiff's Exhibit 6 received in evidence.)

MR. GLASS: In order not to delay --

MR. FLEMING: I am sorry, one other matter, your Honor: we have subpoenaed Mr. Andrew Norman for testimony, if necessary. Mr. Glass represents that he has Mr. Anderson, Mr. Jackson and one other witness this afternoon.

MR. GLASS: No. I said that is the order of priority -- we are going to finish with Mr. Anderson, then I am going to call Mr. Jackson, and perhaps we will have one other witness.

THE COURT: All right; you have a subpoena out?

MR. FLEMING: He is right here, and if your Honor could direct him to appear tomorrow -- although there

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is a possibility that he might be reached this afternoon, but the likelihood is not.

THE COURT: Well, we will adjourn at 4.30 today.

MR. FLEMING: Well, I will call Mr. Norman during the recess if I think we can reach him this afternoon.

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. GLASS:

Q Is it not correct, Mr. Anderson, that the action by the stockholders to issue 12,500 shares of stock to Mr. Jackson was not done at a formal board meeting but rather by unanimous consent of all the stockholders?

A It was not done at a formal stockholders' meeting but rather by unanimous consent of the stockholders.

MR. GLASS: May I have this document marked for identification.

xx (Plaintiff's Exhibit 7 marked for identification.)

BY MR. GLASS:

Q Mr. Anderson, I show you what has been marked as Plaintiff's Exhibit 7 for identification and ask you if you can identify this document (handing)?

A This is a photocopy of the minutes of a special

meeting of the board of directors of Chelsea House held on June 13, 1969.

Q And was this a meeting at which Mr. Jackson was elected secretary and a director of Chelsea?

A This is the meeting at which he was elected secretary of the meeting.

Q Was he present --

A Rather, of the corporation.

Q Was he present at the meeting?

A The minutes say that he was not present at the meeting.

Q The minutes do reflect that house counsel was present?

A Yes, they do.

Q And who was house counsel?

A Leon Friedman.

MR. GLASS: I offer Plaintiff's Exhibit 7 for identification into evidence (handing).

(Mr. Fleming examines.)

Q Do you remember whether there was another representative of Royal, Koegel at that meeting?

A The minutes reflect that Bruce R. Tuttle, Jr. was present at the meeting.

Q Who was he?

A He was at that time an associate, and he is now a partner in the firm of Rogers & Wells.

Q In what department?

A He was in the corporate department.

Q Was Mr. Jackson in the corporate department, if you know?

A No.

Q He was not or you do not know?

A He was not in the corporate department.

Q Can you tell us in 1969 and up to April 10, 1970, what Mr. Jackson did as a member of the firm of Royal, Koegel?

A Yes, he was and is presently primarily a litigator.

MR. FLEMING: I have no objection to Exhibit 7.

(Plaintiff's Exhibit 7 received in evidence.)

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rpl Anderson-direct

T2 Q Mr. Anderson, I believe you testified that Plaintiff's Exhibit 7 reflects the presence of Mr. Friedman as house counsel at the meeting of the board of directors held, is that correct?

A It does, yes.

Q Do you know what Mr. Friedman did as house counsel in the latter part of 1969 and 1970; what his duties were, if you know?

A Well, to the best of my knowledge Mr. Friedman was still house counsel and he did the basic day-to-day legal work for Chelsea House.

Q Do you know if he was a full-time employee?

A I don't know for sure. I am virtually sure he had an office there.

Q Getting back to Plaintiff's Exhibit 6 in evidence, I believe you testified that this was the procedure that was used to authorize the issuance of the 12,500 shares of Chelsea stock to Mr. Jackson, is that not correct?

A That is correct.

Q And you included the fact of the issuance of the 12,500 shares in the various drafts of the registration statement that you prepared, did you not?

A I did.

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Q I call your attention to what has been received in evidence as Plaintiff's Exhibit 3, a draft of the Chelsea registration dated June 23, 1969, and in particular direct your attention to Item 26 appearing on page 2-1, wherein it is stated that "On June 30, 1969, the company issued to Messrs. Stuart A. Jackson, Jeffrey Steinberg, Leon Friedman and Fred Israel 12,500, 3000, 2000 and 5939 shares, respectively, of its common stock. Mr. Jackson's shares were issued in consideration for his agreement to become secretary and director of the company."

A Right.

Q I also call your attention to what has been received in evidence as Plaintiff's Exhibit 2, and direct your attention to the same item in this latter draft which I believe is July 29, 1969, on page 2-1, wherein it is written:

"Mr. Jackson's shares were issued in consideration of his acting as a finder for the company, but since the company has determined to make its offering by itself and without underwriter, Mr. Jackson will return such shares to the company."

Do you recall that?

A Yes.

Q Now, Mr. Anderson, can you tell the Court as

the draftsman of the registration statement, at least from a legal point of view, the facts and circumstances which gave rise to the revision of Item 26 to reflect Mr. Jackson as a finder rather than to receive the shares by virtue of his agreement to become a secretary and director of the company?

A Well, the proof of the registration statement as is the general practice in our firm was circulated to various members of the corporate department.

Q By the proof are you now referring to what is Plaintiff's Exhibit 3 in evidence?

A Right. In the course of the review, it was decided by certain members of the corporate department that the receipt by Mr. Jackson of the 12,500 shares could be misconstrued as being received in the capacity as a finder and also, about this time, the firm decided to make a policy to the effect that members of the firm should not hold shares in the company which was about to go public.

Consenquently, it was decided that Mr. Jackson should return the shares and that the transaction should be described in the registration statement in the most cpnservatove fashion which would be to list him as being a finder.

Q Now, did Mr.Jackson direct you to make a change

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in the registration statement reflecting him as a finder?

A That particular change in the registration statement was phoned in to me by the head of the corporate department.

Q Where were you?

A I was at the printer. This was the night before the registration statement was to be filed and we had just about had the whole thing wrapped up when the call came in.

Q I take it Mr. Jackson was not at the printer?

A That is correct.

Q I believe you testified that the proposed underwriting through Herzfeld & Stern was aborted and thereafter, on July 29, 1969, this registration statement was filed without an underwriter, as a self-underwriting, is that correct?

A That is correct.

Q After the initial filing with the SEC on July 29, did you have anything further to do with this registration statement?

A Yes. We received a letter of comments from the Securities and Exchange Commission some time in the fall of 1959, October or November, I don't remember the exact month. Mr. Steinberg directed me to prepare a new draft

of the registration statement to reflect our responses to this letter of comments and also to update the prospectus and I did prepare a subsequent draft for Mr. Steinberg's review and sent it over to Chelsea House and that was the extent of my work on the registration statement.

Q Well, did he ever send you back his comments?

A I don't believe that he did.

Q And was an amendment to the initial registration statement ever filed?

A No, it wasn't.

Q Now following your work on the responses to the Securities and Exchange Commission letter of comment in October, or the fall, as you put it, of 1969, did you thereafter do any other work on an underwriting for Chelsea or -- for Chelsea.

A No.

Q So that am I correct in stating that the last work that you did in connection with an underwriting for Chelsea was the work that you did in the fall of 1969 in responding to the letter of comment?

A Well, that is correct so far as the revision of the prospectus would go.

Q To your knowledge did any other member of the corporate department of Royal, Koegel work on a Chelsea registration statement after you prepared those responses?

A No.

Q After you finished your work on the SEC responses, did you as an associate in the corporate department of Royal, Koegel continue to service the Chelsea account?

A I was the person at the firm who was responsible for servicing the account during that period, yes.

Q Now getting back again to the sale of the Oppenheim stock, did anyone ever discuss with you why Mr. Oppenheim was selling his stock prior to the closing?

A Well, I cannot recall any specific conversations, but I believe that Harold Steinberg had told me that the reason that the sale was going to take place was that Mr. Oppenheim was generally making himself a nuisance with respect to the conduct of the business of the firm, of Chelsea House, ostensibly or inferentially for the purpose of having himself bought out.

MR. GLASS: I have no further questions of this witness, your Honor.

CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Anderson, when did you become a member of the Rogers & Wells firm?

A October 1, 1973.

Q So that during all that period of time about which you have given testimony, of course you were an associate of that firm.

A That is correct.

Q You testified about attending a meeting in late

1969 or early 1970 with representatives of Bache & Company having to do with a possible private placement or underwriting of some sort; do you recall that testimony?

A Private placement, correct.

Q Am I correct that Mr. Jackson was scheduled to go to that meeting and could not?

A I believe he asked me to attend because he could not attend.

Q In other words, Jackson was aware of it and was scheduled to go but could not and asked you to go in his place?

A When you say "scheduled to go," I am not sure but I am sure if he would have been able to go he would have gone. He asked me to go.

Q He asked you to go?

A Yes.

Q When you say you are sure if he would have been able to go he would have gone, do you mean by that that the efforts of Chelsea House to raise money was something which was of interest to Mr. Jackson?

A Well, he was the partner in charge of the account and he would naturally have attended any important meeting.

Q And you would include important meetings, in your experience, at least, on this account, a meeting with

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respect to the underwriters' sources of capital?

A Yes.

Q Am I correct that Chelsea House during the period of time when you were associate working on the account was engaged in fairly repetitive attempts to seek outside capital? Is that a fair statement?

A To the best of my recollection I only got into this situation in May of 1969, at which point Herzfeld & Stern was already in the picture.

Q I am directing your attention to the period beginning then up to the time that it entered into Chapter XI.

A I was not generally aware of any attempts to raise capital other than with Bache & Company and E.L. Aron's transactions. There may have been others, but I am not personally aware of them.

Q Well, that is Herzfeld & Stern, is that correct?

A Yes.

Q And Bache & Company?

A Yes.

Q And E.L. Aron?

A Correct.

Q Am I correct that E.L. Aron was the last of those attempts?

A That is correct.

Q So that that postdated Bache's withdrawal some time either at the end of 1969 or the beginning of 1970?

A It postdated Bache's withdrawal, that is correct.

Q What work did you do in connection with E.L. Aron's offering, or whatever it was supposed to be?

A The only thing I did, I believe, was either to prepare or to review a proposed letter of intent.

Q Tell me, were you familiar at all with a potential underwriting or private placement through Herbert Young & Company?

A No.

Q You were never told that?

A No.

Q Did you refer back to Mr. Jackson after the meeting that Bache, that is, the end of 1969 or early 1970, that Bache had withdrawn from any further negotiations?

A I think I told him that the deal had aborted.

Q The deal had aborted?

A Yes.

Q That the money would not be raised through Bache's efforts.

A Yes.

Q Did you give him the reason why it had withdrawn --

why Bache had withdrawn?

A I don't recall having told him the reason.

Q Was the reason that the year-end figures, were made available by the company, showed that it suffered a loss for the year-end October 31, 1969?

A The reason as I got it was that the financial statements were exhibited to their staff and they decided on the basis of the financial statements this was a deal which they would not be able to place.

Q And I take it you reported that back to Mr. Jackson?

A I probably did.

Q He was the partner.

A Yes, I told him they wouldn't do the deal. I don't recall that I told him the exact reason.

Q Did he ask you why?

A No.

Q Was it his practice to inquire in that regard?

A I guess he usually would ask.

Q Is it your best recollection or not that you told Mr. Jackson why Bache was withdrawing from the deal?

A I can only guess. I would guess that I probably told him.

Q Now, was any corporate partner of the firm assigned to the Chelsea House account?

A No.

Q Can you tell me, was it the practice of Royal, Koegel not to have a corporate partner in charge of registration, or was it the practice to have in most instances?

A I would say that there was no policy.

Q Now, did Mr. Jackson tell you when he told you to go over and work on the purchase agreements in 1970, did he tell you that Mr. Oppenheim had resigned?

A No.

Q By the way, did you testify that -- well, I will withdraw it.

Did you bill -- did you keep your time as a lawyer which you spent in preparation of documents and in other respects in connection with the buy-out of Oppenheim?

A Did I keep diaries?

Q Did you keep time sheets?

A Yes.

Q And were those time sheets charged to Chelsea House?

A I believe my entry was to Chelsea House, yes.

Q I asked that because, did you testify that it was your understanding that you were representing only Mr. Jackson?

A That was my understanding.

Q But you did keep time sheets to show?

A Yes, I did, because I assumed, having no other instructions, that everything would be sorted out by our accounting department, and so on. I had no other instruction to whom to bill it, so I just lumped it all in under that particular category.

Q Whatever reason you billed your time to Chelsea House?

A I filled out my time records in that fashion. I was not in charge of billing time.

Q I am sorry, you are quite right. You filled out your time records on the time spent and charged the time to Chelsea House, whoever made the bill.

A That is correct.

Q Do you know why the incident with regard to the 12,500 shares was not disclosed in Part 1 of the registration statement, which is commonly known as the prospectus part?

A Because the transaction had been rescinded.

Q I am talking about in the original draft.

A In the original draft? I think it had been.

Q It was in both Part 1 and Part 2 of the original draft?

A I believe so, yes.

MR. FLEMING: Thank you.

May I have just a moment, your Honor?

(Mr. Fleming conferred.)

MR. FLEMING: I have nothing further.

THE COURT: Where would that be found? I don't seem to find it.

THE WITNESS: Towards the end.

MR. GLASS: Yes, your Honor, if I may respectfully call your Honor's attention to Plaintiff's Exhibit 3 in evidence, page 15, you will note in the printed part a statement to the effect that Mr. Jackson was just issued 12,500 shares of common stock in consideration of his agreement to serve as secretary of the company.

THE COURT: Is that Exhibit C?

MR. GLASS: This is Plaintiff's Exhibit 3.

MR. FLEMING: Our Exhibit C would be the prospectus, the final prospectus.

THE COURT: Yes.

MR. FLEMING: I take it that Plaintiff's Exhibit 3 is the preliminary draft of both Part 1 and Part 2 of the registration statement?

MR. GLASS: That is correct.

THE COURT: All right.

MR. GLASS: I have no further questions of this

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witness, your Honor.

(Witness excused.)

MR. GLASS: May I proceed, your Honor?

THE COURT: Yes.

MR. GLASS: The plaintiff calls Stuart Jackson.

S T U A R T A. J A C K S O N, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GLASS:

Q Mr. Jackson,where do you reside?

A Old House Lane, Sands Point, New York.

Q And what is your occupation, sir?

A I am an attorney, a member of the Bar of the State of New York.

Q And how long have you been practicing your profession?

A Since 1958.

Q And with what firm are you associated?

A I am with the firm of Rogers & Wells.

Q In 1969 was Rogers & Wells known by a different name?

A At that time it was Royal, Koegel & Wells.

Q And were you associated with the firm in 1969

and 1970?

A I was.

Q Did your firm represent Chelsea House Education Communications,Inc. in 1969?

A It did.

Q And do you recall when this representation commenced?

A Some time in the vicinity of April, 1969.

Q Who retained your firm to represent Chelsea House, and what were the circumstances?

A We were retained at that time by Harold Steinberg who was then serving as the president.

I was introduced to Mr. Steinberg by Mr. Steinberg's son, Jeffrey.

I had been introduced to Jeffrey by his partner Stephen Wise, who was also connected -- turned out to be connected with Chelsea House, and I had been introduced to Stephen Wise by one of our clients, a Mr. Charles Maybruck, who was an investment banker.

Q Mr. Jackson, what was the nature of your retainer from Chelsea?

A We were asked if we would consider being retained to assist Chelsea House in its preparation for a public offering.

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Q Did your retainer include finding an underwriter for Chelsea House?

A No, it did not.

Q Did you nevertheless introduce the company to an underwriter?

A Yes. Some time after we were retained, I believe it was Mr. Steinberg indicated to me that he had thus far been unsuccessful in persuading an underwriter to come forward and make the kind of commitment that he thought Chelsea House was entitled to.

He asked me whether there was anything that I could do to assist the company.

I had two neighbors in Sands Point who were in the investment banking business. During one of our train rides home I advised them of the fact that there was a little company in the publishing business that was interested and would they be interested in finding out more about the company.

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Q Who did you talk to?

A Well, I talked to a fellow by the name of Alan Brenits.

Q Who was he connected with?

A He was a partner of Herzfeld & Stern.

Q And what did you do as a result of your conversationswith Mr. Brenitz?

A Mr. Brenits asked if I could secure for him some literature about Chelsea House. I asked Mr. Steinberg to make up a folder of paraphernalia,which he did, and I had it transmitted to me and I had sent it down to Mr. Brenits' office.

Q As a result of the delivery of this literature, did there come a time when representatives of Chelsea House and the investment banking firm of Herzfeld & Stern took place?

A Yes. There was a meeting following the receipt of the material by Mr. Brenits.

Q Were you present at that meeting?

A I believe I was.

Q Can you tell us what happened?

A Well, as I recall the meeting, Mr. Brenits appeared with a fellow who was then in the underwriting department of his firm. His firm was not solely under-

writing, they were investment bankers, and there was a question and answer session between Mr. Brenits and his associate and the representatives of Chelsea House in an effort to define from them what it was they had been doing, what their aspirations were and trying to bring the underwriters up to date as to what was going on in the late spring and early summer of 1969.

Q Were there subsequent meetings?

A Well, there may have been. I recall at least one meeting at which I was present.

Q Can you tell the Court approximately when that took place?

A Well, I believe that that took place terribly close to the end of July, 1969, at which the underwriter indicated, said that the market conditions were such that in their opinion, the underwriter's opinion, the stock could not be sold at $9 or $10, whichever price was then under discussion, whichever price the underwriter and Chelsea House had talked about without my being present.

They said that they thought perhaps they could do the deal on a firm commitment basis for seven or seven and a half dollars.

Q Mr. Jackson, do you know who in addition to the representatives of Herzfeld & Stern were present at

rp3 Jackson-direct

this meeting?

A Well, I believe there were present Mr. Steinberg, Mr. Norman, Mr. Hector, Mr. Oppenheim --

Q The defendant?

A Yes, and I believe there was also present Mr. Friedman and maybe Mr. Fred Israel, but I am not sure.

Q What was the response of Chelsea House management to the suggestion of Herzfeld & Stern that the offering price for their shares be $7 or $7.50?

A My best recollection is that they were very disappointed in the fact that Herzfeld & Stern thought that their company -- that the management was disappointed that Herzfeld & Stern thought that their company was only worth $7 or $7.50 on the market.

Q Did there come a time in June of 1969 when you were elected secretary and a director of Chelsea House?

A Yes, that happened, as I am now refreshed, exactly at a meeting at which I did not attend on June 13, 1969.

Q Can you tell the Court the circumstances under which you agreed to be the secretary and director of the company?

A Well, as the progress on the underwriting moved along Mr. Steinberg communicated with me and told me that

he had discussed with management the possibility of asking me to join the board and to become secretary.

He indicated that while he recognized I was very busy and would not have time for a company as small as his, he said that he would consider, the management would consider it a privilege if I would join them as a secretary.

He thought it would enhance the possibility of their undertaking this public offering.

Q What did you say in response to that comment of Mr. Sternberg's asking you to come aboard?

A Of course I indicated that I was flattered by the suggestion that I might lend any weight to the possibility of going public, but I told him that if I did undertake the responsibility of becoming a director and secretary that he would have to understand that I could not become involved at all in the management of the company, period.

And that I would like to take the position that Mr. Schlesinger then enjoyed, purely an outside director, though unlike Mr. Schlesinger I would not ne in a position of contributing any editorial work.

Q Did Mr. Steinberg agree to those conditions?

A He told me he would get back to me and he said that he had discussed the matter with management and they

were still desirous of having me join the board and become a secretary, even though I would not be participating in the activities of the company.

Q Subsequent to that conversation, did you or did you not participate in the day-to-day operations of the company?

A I did not participate in the slightest.

Q Who in your firm worked on the company registration statement?

A Well, initially Bruce Tuttle, Jr., a young man in the corporate department, was assigned the task by the corporate department.

When I got the account I asked the corporate department for appropriate people to service the account. Mr. Tuttle was assigned that job.

Thereafter, Grant Anderson joined the firm coming from another large firm downtown, and he then joined the team with Mr. Tuttle.

Q To your knowledge, what did Mr. Anderson do?

A Anderson was then charged primarily with handling the registration statement and Mr. Tuttle took on handling such other corporate problems as might arise.

Q Now, did you have anything to do with the drafting of the registration statement?

A I did not.

Q You signed it, did you not, as secretary and director?

A Yes, I did.

Q Did you read it before you signed it?

A I read it very carefully before I signed it.

Q Did you make any comments?

A I am sure I did.

Q Did you transmit those comments to Mr. Anderson?

A I am sure I did.

Q Did you personally check out the representations contained in the registration statement?

A No, I didn't. I relied completely on the due diligence which I assumed had been accomplished by members of the corporate department.

Q Of your firm?

A Of my firm.

Q Let me go back to one point.

In addition to your having this conversation with Mr. Steinberg relative to retaining your firm and subsequently your becoming a secretary and director, did you have any discussion with him relative to the selection of an accounting firm to work on the registration statement?

A Yes. When we were first engaged there appeared to be a lack of appreciation by management as to exactly what was involved in going public.

Although I was not in the corporate department I was knowledgeable, having grown up with the firm's training program, and I had litigated various cases involving these areas so I knew a lot about it and discussed what the various responsibilities were and what they ought to do to facilitate the registration statement.

I suggested to Mr. Steinberg that he get an accountant of good reputation, really impeccable. He told me he had been undertaking to get an accountant and I believe he said at the time he had negotiated with Arthur Andersen & Company.

Some time thereafter Mr. Steinberg reported to me that he was unable to make a deal with Arthur Anderson and asked me whether there was any way that I could assist him.

Q Did you offer any assistance?

A I did not. However, about several weeks after he had spoken to me I took a plane trip to Mexico and completely by accident seated next to me was the managing partner of Price Waterhouse, and as it is a four and a half or five-hour trip, we talked about this and that

and he talked about the state of business.

Then I asked whether or not it was Price Waterhouse's policy to undertake to represent people as small as Chelsea House.

He said that from time to time they do, it depends upon the nature of the people and if I cared to, to give him the name of the company, he would assign someone to make the contact.

I assumed that thereafter he did. I let him have the name, I am sure, and thereafter he called or somebody in his office called and some time thereafter I received word from Mr. Steinberg that he had heard from Price Waterhouse and they had successfully negotiated for Price Waterhouse undertaking the financials for Chelsea House.

That was my sole effort, completely by accident.

Q I believe earlier you testified that the Herzfeld & Stern proposed underwriting on behalf of Chelsea House was aborted and following the decision of Chelsea's management not to go along with Herzfeld & Stern, what if anything did you have to do with Chelsea House?

A Well --

Q Taking you back to July 29 of 1969.

A After the underwriting aborted with regard to Herzfeld & Stern, a decision had to be made as to what, if

anything, should be done with the fact that the registration statement had all been but wrapped up and ready to go.

A decision was made that after consultation with people in my corporate department, that a self-underwriting would be appropriate in order to save all the effort that the company had put forth.

I directed Mr. Anderson to do what was necessary to effect this self-underwriting.

Thereafter my best recollection is that I had nothing to do with Chelsea House until August, a month later, when I believe I again had occasion, which now escapes me, to review the self-underwriting, I believe aniticpating the letter of comments by October.

Again, I had nothing to do with the company for another month or so and then I remember again calling upon Mr. Anderson in October, the letter of comments from the SEC came.

Mr. Anderson discussed the letter of comments with me. As a matter of fact, I am sure that the cover of the registration statement designates me as the recipient of communications of this sort and I am sure that the letter of comments in the ordinary fashion would have been addressed to Chelsea House, copy to me personally.

I am sure I got and gave it to Mr. Anderson and

I told him to communicate with Mr. Steinberg and then that was the extent of my communication.

At the same time I believe that Chelsea House was in litigation with an outfit by the name of Video Film. It had something to do with a breach of contract arising out of the purchase of a film library, as I recall, and I was undertaking representing, personally representing Chelsea in that regard.

Q Did there come a time in November of 1969 when you met with any member of the management of Chelsea and another underwriter?

A Yes. I believe that in November I met with a fellow whose name is Herbert Levine. Mr. Levine was the managing partner of Herbert Young & Company. Herbert Young & Company was a small over-the-counter house that was introduced to Chelsea House by Charles Maybruck.

Q You did not introduce the company to Chelsea?

A I did not. As a matter of fact, I remember Mr. Maybruck indicating to me because he was my client, that he wanted to be protected because he was seeking a finder's fee of some sort because he introduced Herbert Young & Company to Chelsea House.

I recall two meetings and I don't know, obviously nothing came of it, but there was some discussion about

what the company was doing and so on and so forth. That was in November of 1969.

Q Following the filing of the registration statement in July of 1969, through to the end of the year, did Chelsea House furnish you with any reports concerning financial information about the company?

A No, they did not.

Q Did Chelsea House prepare for its own internal use any balance sheet or profit and loss statement during that period?

A To my knowledge they did not prepare any such documents at any time.

Q After your meeting in November, did you have any further contact with anybody in Chelsea House?

A Well, my recollection has been refreshed to the extent that I believe I had a telephone call or meeting with Leon Friedman, who was the house counsel.

Q When was that?

A Some time in early December, about some legal matter, the exact nature of which escapes me.

Q Let us go into January, February and March of 1970.

What, if any, was the extent of your contact with Chelsea House or any members of its management? Let us

take Mr. Steinberg first.

Did you talk to Mr. Steinberg during the months of January, February and March?

A Yes, I did.

Q Can you tell the Court whether you had contact with him in the month of January?

A Yes,I did.

Q And February?

A Yes, I did.

Q And March?

A Yes, I did.

Q Can you tell us whether those contacts were in person or on the telephone?

A I believe they were in person.

Q Did you have conversations with him with respect to Chelsea House during that period?

A Yes, I did.

Q Can you tell the Court what was said or the substance of it if you don't recall the exact words?

A Well, in the month of January I was talking to Mr. Steinberg about his proposed meeting with Bache & Company. There was some discussion, as I recall it, about a small private placement being considered. I had not participated in any documentation or negotiations leading

up to Bache. I believe that they had been introduced by Mr. Norman or Mr. Oppenheim.

In any event, I knew about it and I was talking to Mr.Steinberg about the nature of the presentation he planned to make to Bache.

Q What did you say to him?

A I asked Mr.Steinberg how things were going for the particular period which was then under consideration by Bache.

I believe the meeting had been delayed through December to enable Price Waterhouse to complete the financials for October, 1969, and everyone was waiting the 1969 financials so that the meeting could take place.

I asked Mr.Steinberg how things were going, how soon he expected the audit to be finished. Did he plan to ask the auditors to expedite the financials and so on and so forth.

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Q Now, what did he tell you?

A He told me that he was optimistic about the results for the year ended 1969.

He told me that he had done everything that he possibly could to expedite the completion of the financials, and that he expected that they surely would be ready before the end of January, by which time he hoped to have the meeting.

Q And did there come a time when you received the October 31, 1969, certified financial statements?

A Yes. I now recall that I did. I wasn't quite sure some time ago, but upon checking my files I find that indeed I had received a copy of this, a letter of transmittal and a copy of those October, 1969, financials.

Q And following that -- do you know when you received them?

A I would say my best guess would be shortly after they were dated -- that is, sometime towards the end of January, 1969 -- I am sorry, 1970.

Q Following your receipt of the October 31, 1969, financial statements did you look at them?

A Of course.

Q And after you looked at them did you subsequently have a conversation with Mr. Steinberg or any other member

of management?

A I am not sure that I did or did not.

Q Well, did you discuss at all subsequent to your receipt of those financial statements the business affairs of Chelsea with Mr. Steinberg, or any other member of management?

A Well, yes, I discussed with Mr. Steinberg the necessity of continuing Price Waterhouse to turn out as late as current financials as they possibly could subsequent to October, 1969.

Q This is in February you are asking for updated financials?

A That is correct.

Q Did you ask him about anything that happened after October 31st to the company in terms of its businesss or its prospects?

A No. Of course I was conversant with the registration statement that had been filed, which indicated that income for the bulk of the first six months was attributable to the Sears, Roebuck catalog. I had assumed that the Sears, Roebuck catalog could not continue forever, and to the extent that the company showed for the year ending 1969 a 30-odd thousand dollar loss, I did not think anything about it.

Q Well, did Mr. Steinberg comment to you on how business was going?

A Steinberg told me in connection with my request of him as to how things were going that things were going just great. On each of the occasions I asked him about how things are going he said, "The company will be profitable for this current year" -- that would be the year ending October, 1970 -- that the company was making company, and while I did not inquire and he did not tell me about any or specific project that he had in mind, he used general terms such as reference works of moving along -- the University-At-Large is starting to sell, and the History Machine is fantastic. Of course I knew the identity of the product of Chelsea House because when I was introduced to the company initially they gave me a kind of a tour of the business, to demonstrate to me what their products were in an effort to induce Roger & Wells, or Royal, Koegel, to represent them, to show that they were not fly-by night that they really had things that were selling.

In addition, of course Mr. Anderson went over there, and the registration statement is replete with a description of the products. So when he said to me the History Machine or the University-At-Large is selling, I understood what he meant, although I did not understand

the items that made up the different categories.

Q Did you talk to Steinberg in March of 1970 relevant to the financing of the company?

A Yes.

Q And did you discuss the business of the company in those conversations?

A Yes. I asked him whether Price Waterhouse was going to be able to turn out a first-quarter unaudited, and he indicated that he thought the last thing that Price Waterhouse would be able to do would be to turn out an April 30th financial, and I asked Mr. Steinberg how things were going generally, and he said, "Stuart, things are fine. We are going to make money this year," and so on and so forth.

Q Now --

A I will say this, Mr. Steinberg never indicated the remotest possibility of things not being great.

Q Did you talk to Mr. Norman at all during this period, do you recall?

A I don't have any recollection of having talked to Mr. Norman, although I don't say that Mr. Norman did not call me about some legal problem, or that I did not call Mr. Norman, perhaps in connection with the Video Film case. He may have been the contact man, the one who was

in charge of purchasing the library.

I just do not know, but as far as those things which I have described, my contact was solely with Mr. Steinberg.

Q Now let us get to March again.

Did you have any conversation in March of 1970 with any other member of management other than Steinberg or Norman?

A I don't think so.

Q How about Mr. Oppenheim?

A In March, yes, I did. I had a meeting with Mr. Oppenheim in my office in March.

Q And when did that take place?

A Well, I thought it was in the middle of March. I believe I heard the date March 13th as the date selected some time in the middle of March. I don't remember the exact date but it was some time in the middle of March.

Q Was anybody else present?

A Nobody else was present.

Q Can you tell me the circumstances under which the meeting came about?

A I don't really know. I received a call from my secretary saying that Mr. Jack Oppenheim wanted to see me. I did not know at the time that he was right there

outside of my office, or downstairs some place, and I said all right, I happened to be there, and the next thing I know Mr. Oppenheim walked in.

Q And did you have a conversation with Mr. Oppenheim?

A I did.

Q What did he say to you, if you recall?

A Mr. Oppenheim said to me that he was frustrated artistically by Harold Steinberg; that he, Mr. Oppenheim, had great ideas for the development of Chelsea House for the work product, but that everytime he, Mr. Oppenheim, suggested anything Mr. Steinberg would throw it in the basket, paid no attention to him whatsoever, and he asked my assistance in speaking to Mr. Steinberg in order that that which Mr. Oppenheim felt he had to contribute would be received by Mr. Steinberg in that light.

Q What was your response?

A Well, I told Mr. Oppenheim that I knew absolutely nothing about the business, I did not know the nature of his problem with Mr. Steinberg but that I was willing to assist him to the extent of speaking to Andy Norman. I told Mr. Oppenheim that I had a great regard for Mr. Norman's ability -- at this time I wanted to know that I looked at the company as having four editorial contributors

They were Mr. Hector, who was the chairman, Mr. Steinberg, Mr. Oppenheim and Mr. Norman -- and they were four very intelligent, creative people. And I told Mr. Oppenheim that I had a great regard for Mr. Norman and if he would have Mr. Norman call me I would be happy to talk to Mr. Norman but I would not call Mr. Norman first -- I did not want to intercede in the affairs, in the problem of management, and, as I recall it, Mr. Oppenheim said that he would try to get Mr. Norman to call me so I would see what help I could be to him.

Q Now in the course of your conversation with Mr. Oppenheim was there any discussion about Chelsea -- other discussion about Chelsea House or members of its management? Was the business of the company discussed at all?

A In a sense.

Q Well, can you tell the Court in what sense?

A Right. Mr. Oppenheim and I discussed -- bear in mind this was a relatively brief meeting -- a variety of projects which Chelsea House was then undertaking.

We talked about The History Machine, the work of the Unversity-At-Large film effort.

I believe he told me there were two or three films -- three or four films that were in process. He described to me generally reference books that were in

process, trade books that were in process, although I did not quite appreciate the distinction between trade books and reference books at that time, and it was disturbed by the fact that the company could do so well with conflict between he and Mr. Steinberg, and if he had the opportunity to lend his artistic bent to this company it would really be something.

Q Anything else that you can recall?

A No, other than, as I said, I asked Mr. Oppenheim to have Mr. Norman call me.

We talked very briefly about the projects which I have described.

Q Let me ask you this question, Mr. Jackson, in that meeting at your office on March 13 of 1970 did Mr. Oppenheim at that time tell you that he had written a letter to the company in February resigning as an officer of the company, effective in March?

A Oh, no, I had no idea that Mr. Oppenheim had resigned. As a matter of fact, until I would say two weeks ago when I reviewed some of the documents in this case and learned that he may indeed have sent a letter resigning as of March.

Q At that meeting with Mr. Oppenheim did he ever tell you that in January of that same year he had attempted

to dispose of all of his stock in Chelsea House?

A He did not, and I did not know.

Q In your meeting with Mr. Oppenheim did he ever tell you that Chelsea House was going through a period -- in words or substance that Chelsea House was going through a period in which the question of its very survival was at stake?

A He did not.

Q In the course of your discussion with Mr. Oppenheim did he tell you that Chelsea House was in a state of emergency?

A He did not.

Q Or that presently the ship was without an effective plan to meet that emergency?

A He did not.

Q In words or substance did Mr. Oppenheim ever tell you on March 13, 1970, that the current liabilities exceeded the current assets or liquid assets of the company by a half a million dollars or more?

A He did not.

Q Did he ever discuss with you, inwords or substance, at your meeting which took place in March of 1970 the fact that Random House was advancing money to Chelsea and that the only way that Chelsea could continue to survive

was by submitting the titles of trade books to Random House so that they could continue to get more advances?

A He did not.

Q Did he ever tell you that the Buck Rogers -- at that meeting, in words or substance, that the Buck Rogers project was completely mismanaged and that the company did not discover that on this project it was not making a profit but rather a loss of a quarter of a quarter of a million dollars?

A He did not.

Q Did he tell you that despite known losses to the management they continued to go into the very same type of projects which could lead to nothing else except further losses?

A He did not.

Q In words or substance?

A No.

Q Did Mr. Oppenheim ever advise you in that meeting in which he discussed his artistic ability and the great projects of the company the fact that the publicity department of Chelsea House ran costly ads for books that weren't even published?

A He did not.

Q Did he ever tell you that management continued to

add books to their list of publications which they had not costed out, for which they had no profit projections and could not predict whether they would have a profit or loss?

A He did not.

Q Did he ever tell you that due to a -- in words or substance, that due to an overemphasis in their trade book aspect they had not paid attention to their multi-book reference works in which area they could have made a profit of $150,000?

A He did not.

Q Did he tell you that to date, as at the time he spoke to you, the company had lost over $200,000 in this University-At-Large film project?

A He did not.

Q Did he tell you that the fellow who they had handling The History Machine project was a total incompetent and who had no background in publishing?

A No, he did not tell me that. He did discuss The History Machine, I will say this, in terms of expectation of success, in view of the recent engagement of Harold Harris who I believe had just joined the company from McGraw-Hill.

Q Had Mr. Oppenheim in this discussion that he had with you on March 13 told you that as far as he was concerned the company had reached the end of its credit line

with Random House, as well as the banks, and that circumstances could lead the company to bankruptcy and the creditors unpaid?

A Absolutely not.

Q Now about banks, did you ever introduce Chelsea to any banks, to your knowledge?

A I did not.

Q Did he ever tell you about the problem that Chelsea House was having with its creditors, that top management was spending a disproportionate time in fending off or deflecting creditors?

A He did not.

Q Did he tell you that he felt that the company was guilty of nepotism, in words or substance, and that Jeffry Steinberg, the son of Harold Steinberg, the president was given responsibility which was far too great for this capacity, in words or substance?

A He did not.

Q In summary, did he tell you that Jeffrey Steinberg, who had a great deal of responsibility in the company and who was an officer of the company, was an incompetent?

A He did not.

Q Other than telling you that Mr. Steinberg and Mr. Norman were rejecting his suggestions and not permitting

him to express his artistic ability in the company, did he offer to you any suggestions or plans to remedy this personality conflict?

A He did not.

Q Did there come a time --

THE COURT: Excuse me, how long did this meeting take -- about five minutes?

THE WITNESS: 15 minutes, your Honor.

THE COURT: 15?

THE WITNESS: Yes.

Q Now, Mr. Jackson, did there come a time in March when you received a call from Harold Steinberg concerning the possible sale of defendant Oppenheim's stock?

A Well, I know, of course, that I received a telephone call toward the end of March about Oppenheim's stock. I was refreshed about three or four weeks ago by Mr. Steinberg himself, during the course of preparation for this trial, that it was he who called me. I didn't, until that time, remember that indeed it was specifically Mr. Steinberg, although I felt sure it was some officer or director of the company.

Q Do you now recall that you did have a conversation with Mr. Steinberg?

A Yes, Mr. Steinberg had refreshed my recollection

Q And can you tell us the substance of the conversation?

THE COURT: Do you remember the date?

THE WITNESS: Towards the end of March, 1970, your Honor.

THE COURT: It was after this meeting?

THE WITNESS: After the meeting with Mr. Oppenheim.

Q Can you tell us the substance of the conversation?

A I recall again, having been refreshed by both Mr. Steinberg and Mr. Anderson, that Mr. Steinberg had called me to tell me about the potential sale of Mr. Oppenheim's stock, and the fact that he -- his inquiry as to whether Royal, Koegel could assist in preparing whatever documents might be required. I indicated that we could and that we would.

He -- I don't recall who said what to whom, but somehow or other I determined from Mr. Steinberg that he was among the people who was -- who were going to buy Mr. Oppenheim's shares.

I am sure I asked Mr.Steinberg again how things were going, and he painted the same picture for me.

Q What was that?

A Very optimistic -- "Things are going to be great

this year," and so on and so forth.

I asked Mr. Steinberg how many shares he expected to buy. My best recollection is that he said he was going to buy 10,000 shares, and I am sure he told me the price of $3 a share.

Q What did you say to him?

A I said if he was willing to buy 10,000 shares, I, knowing Mr. Steinberg's limited financial ability, I said I would be willing to buy 10,000 shares.

Q Following this Steinberg conversation, did you at any time, either by document or orally ever authorize any member of Chelsea's management to act as your agent in any capacity in connection with your proposed purchase of shares owned by Oppenheim?

A Not at all.

Q Did Mr. Steinberg or any other member of management ever ask you to enter into any voting trust or other agreement with respect to your acquisition of the Oppenheim shares?

A No.

Q Prior to or subsequent to your purchase of shares from Mr. Oppenheim, did you ever have any agreements, written or oral, with any member of Chelsea management with respect to the sale or voting of your shares?

A No.

Q Other than the initial conversation that Mr. Steinberg had with you, did you ever have any conversation with any of the other purchasers prior to the closing?

A I don't believe that except for Mr. Steinberg I knew who the other purchasers were, until after the closing.

Q Who represented you in connection with the transaction?

A Grant Anderson.

Q And I believe Mr. Anderson is now a partner of yours and at that time was an associate of your firm's?

A Correct.

Q And were documents executed in connection with your purchase?

A Yes, they were.

Q I believe you heard Mr. Anderson testify that although you did not sign those documents personally and you did not attend the closing, you authorized him to sign the purchase agreement in your behalf, and also to sign the notes as your attorney in fact; is that not correct?

A That is correct.

Q Now, prior to your purchase of the Oppenheim shares were you aware of the so-called Oppenheim memorandu...

Plaintiff's Exhibit 1 in evidence?

A I was not.

Q Prior to your purchase of the Oppenheim shares had Mr. Oppenheim ever called you and told you that he had prepared and distributed a critical memorandum concerning the company and its business affairs?

A He had not.

Q When was the first time you learned of the existence of this memo?

A The first time I saw it was some time in the summer of 1970, in connection with a controversy between Mr. Oppenheim and myself. As I recall, it was shown to me by one of the litigators in my office who somehow or other obtained a copy.

Q Prior to your appearing here today at my request, Mr. Jackson, you have examined Plaintiff's Exhibit 1 in evidence, the Oppenheim memorandum, have you not?

A I certainly have.

Q Can you tell the Court whether or not any of the facts contained in that memo were discussed with you at your 15-minute meeting with Jack Oppenheim on March 13, 1970?

THE COURT: Isn't that what you all went through already?

MR. GLASS: Yes, but I want to tie it in to make

sure.

(Question read.)

MR. GLASS: I think his answer has anticipated the question.

A (After examining) There is nothing in the memorandum -- there is nothing in, whatever exhibit this is --

Q 1.

A -- Plaintiff's Exhibit 1 which was related to me, discussed with me or hinted to me by Mr. Oppenheim during his 15-minute meeting with me in my office.

Q With the exception, I believe you testified, of the personality conflict and the failure of management to recognize Oppenheim's artistic ability?

A I am not sure that is in here, but if it is in here, that is the sole extent of the complaint that he related to me.

Q So far as you know was anyone associated with your law firm ever shown this memorandum or made aware of its existence prior to your purchase of the shares?

A So far as I know, nobody was.

Q Would you have purchased the Oppenheim shares if prior to the purchase you had known of the existence of the memorandum and the facts contained therein?

A Absolutely not.

Q Prior to your purchase of the Oppenheim shares did you make any independent investigation of the business affairs and financial condition of Chelsea House?

A In a sense.

Q Would you explain that to the Court, please? What did you do?

A I, of course, had the registration statement filed in July of 1969. That included not only a disclosure of the business at that time but it included the financial statements up to the period of April, 1969.

By January I had obviously received the financial statements for the period ending October, 1969. During the period from January through April of 1970 I had several conversations with Steinberg, probably at least four or five in number, at which we had the general type of discussion that I have described heretofore, indicating, how was business doing, how were sales, "Are we going to make a profit?" -- all of which was generally "Great, great, good, yes."

Of course I had had the meeting with Mr. Oppenheim in March of 1970 in which Mr. Oppenheim indicated that everything was going great with the projects that he described to me. His only complaint being not with the

prospects of the company, not whether or not it was making money or losing money, not with whether or not it couldn't pay its bills but only his complaint about the company's failure to appreciate his artistic ability. And I fed all that together and it was -- that was the analysis, that was the investigation that I made. I knew, of course, at the time that Price Waterhouse was in Chelsea House at that time, in April.

Q Let me ask you this question, Mr. Jackson: Did you ask anyone at the end of March or early April for an updated financial statement?

A I think I indicated earlier I had spoken to Steinberg and he indicated to me that Price Waterhouse was going to try to turn out an April 30 financial, 1969. There were no plans for turning out any interim figures.

Q Did the company have a policy of issuing or not issuing interim financial statements?

A The company did not issue any interim figures.

Q Do you know whether any existed after that time?

A I am sure they did not.

MR. FLEMING: I object to that answer and ask that it be stricken.

THE COURT: Strike it out.

A I knew of none.

THE COURT: That answers it.

Q Did there come a time, Mr. Jackson, when you were advised that Chelsea House had serious financial difficulties.

A Yes.

Q When did that take place?

A Well, I would say that is the time that I found out that the house had fallen in was the end of June, toward the end of June, 1970.

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I believe that by sometime in May, 1970, I had been aware of the fact that things were not as rosy as had otherwise been indicated.

Q How did that happen?

A Well, as far as June is concerned, I remember receiving a telephone call, I think it was at night at my home, indicating that the company had to go into Chapter XI to protect itself and it had to be done right away and would Royal Koegel assist and represent the company in that regard.

Q What did you say?

A Even though I had been in discussion with the company in May, I couldn't believe that that had happened and I was unwilling on behalf of the firm to represent the company.

Q What happened?

A Well, I believe it was Andy Norman who called me the first time and Harold Steinberg called me the second time and put it on a very personal basis, we are in a jam, you are the only one we can turn to, your firm knows, based upon the people you have, Grant Anderson, you have worked on litigation and we have to do this right away and we dont think we will be able to get anybody in who we can pay right away.

So on the basis, a personal basis, the firm agreed to undertake the representation.

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Q Getting back to Mr. Oppenheim, did you ever discuss Oppenheim with Mr. Steinberg?

A Only as a member of the editorial team.

Q Did Harold Steinberg ever tell you that Mr. Oppenheim was a gad-fly?

A He never related that to me. As far as I was concerned, Steinberg only spoke of Mr. Oppenheim with high regard.

MR. GLASS: May I have a moment, your Honor?

THE COURT: Yes.

I take it, Mr. Jackson, you had greater respect for the judgment of Mr. Oppenheim that you did for the judgment of Mr. Steinberg, is that correct?

THE WITNESS: I don't know what you mean, your Honor.

THE COURT: About business matters and so on.

THE WITNESS: No, your Honor, I didn't have any particular regard for Mr. Oppenheim's judgment about business. As far as I know he never talked business over with me.

THE COURT: You said that if you had known what he wrote in that particular document that you would have credited that rather than the good news that Mr. Steinberg gave you.

THE WITNESS: Yes, in that sense and if you like I would be happy to explain it to you.

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Mr. Oppenheim was selling his stock. This was not a case where I was putting my money in Chelsea House. I was allowing Mr. Oppenheim to walk away from the company, speaking of a bail-out by Mr. Oppenheim.

I had no idea that anyone would suggest that the current liabilities exceeded the current assets by $500,000. My last analysis showed them to be a ratio of one to one.

THE COURT: You said you would have believed him.

THE WITNESS: If Mr. Oppenheim told me that he thought the company was on the verge of going bankrupt, I would have believed any seller, Mr. Oppenheim, Mr. Steinberg, Mr. Norman. I wouldn't pay one dollar for anybody walking away from the deal. If he told me that I want to forewarn you I think the company is going under, I don't think anybody would have bought the stock who was just interested in an investment if the seller told him that he thought the company was going under.

THE COURT: All right.

BY MR. GLASS:

Q Mr. Jackson, to your knowledge was Oppenheim aware of the fact that you did not participate in the daily business affairs of the company?

A I assume he had to be.

Q To your knowledge was Mr. Oppenheim aware of the

fact that you had to rely upon the inside members of management for informationconcerning the company?

A I am sure he knew that.

MR. GLASS: I have no further questions. Thank you, your Honor.

THE COURT: Why don't we take a short recess.

(Recess.)

CROSS-EXAMINATION

BY MR. FLEMING:

Q Mr. Jackson, let me place before you the prospectus, Defendant's Exhibit C; the audited financial statements for October 31, 1969 copy of which I believe is B or A in evidence, and a copy of the New York Magazine article which is Defendant's Exhibit in evidence.

The financial statement is B in evidence for the period ending October 31, 1969 and the New York Magazine article issue of March 2, 1970, is A in evidence.

Did you testify that at the time you made the purchase of the stock or participated in the purchase of the stock, you had available to you first of all the registration statement itself which would include the prospectus, Defendant's Exhibit C in evidence?

A That is right.

Q That prospectus, of course, does contain the state-

ment of financial condition both for the year ending October 31, 1968 and six months ending April 30, 1969, is that correct?

A It does.

Q You also I believe testified that you had in your possession the Price Waterhouse audited statement of financial conditions for Chelsea House for the fiscal year ended October 31, 1969?

A That is correct.

Q Had you also as of the date of the purchase read the article in the New York Magazine concerning Chelsea House?

A Well, I don't have any specific recollection of having read it but as I recall it, this article appeared I believe in February or March 1970 issue of the New York Magazine and assuming that I am correct on the date, then I would have read it.

Q The date of the issue is March 2, 1970. I take it then you would have read it as of the date you made your purchase?

A Prior to April 10, certainly.

Q Would you have read it at the time you committed yourself to participate in the purchase?

A I wasn't committed until I paid the money. I wasn't committed until Anderson signed the contract but I

read it, I would have read it before I bought the stock if that is what you mean.

Q I withdraw the question and ask you did you read the article prior to the time that you told Steinberg you would participate in the purchase?

A I am not sure.

Q Is there anything there that leads you to believe that you would not have read the article until after you had said to Steinberg you would participate in the purchase?

A No, there is nothing in it one way or the other. I just can't tell. I am sure that if this thing came out early in March that by April 10 I would have read it.

6--2 Q I direct you to page 49 of that article and to the first full paragraph on that page. I will read it toyou.

"Hector and Steinberg kept in touch by the Russian Tea Room. During those late night sessions Steinberg unfolded this new business of publishing. Hector's words 'I immediately attacked Steinberg and said where the hell did you get the money?'

" He said, meaning Steinberg, it cost me $40. First you get an artist to make a dummy book for nothing. Then I write the book and then I go and take the dummy up to the distributor and he gives you a letter saying he will distribute so many copies of the book. Then you take this letter to a

printer and based on the fact that the distributor will distribute it you get the printer to give you some credit. You set up the distributor and the printer with an advance from the distributor and pay the printer if you feel like it."

You had read that quotation?

A I am not sure I did but I am sure I read the article.

Q Did you ever discuss this quotation with Mr. Steinberg?

A I wouldn't have any recollection of having discussed any specific aspect of the article with Mr. Steinberg.

Q Did you discuss this article with Herbert Levine?

A No, sir.

Q Herbert Young and Company?

A No, sir, not to the best of my knowledge.

Q Did Mr. Levine raise the article with you at any time?

A Not to the best of my recollection.

Q I take it then you did not mention such a discussion to Mr. Oppenheim?

A That is correct.

Q Did you discuss the article with anyone at Chelsea House?

A I believe that Mr. Steinberg discussed the article with me in terms of New York Magazine writing a spoof about

Chelsea House. Mr. Steinberg had told me that this article was scheduled to be printed in the New York Times Magazine section but it was slightly off color and the idea of the topless secretary was something which the New York Times people thought was just not appropriate for their prestigious publication, which made sense.

Q Did Mr. Steinberg discuss this with you during the period of time that E.L. Aarons was considering to raise capital for Chelsea House?

A No, I believe, Mr. Fleming, that Mr. Steinberg discussed this article to the extent that he discussed it before it appeared.

In other words, my discussion was before the article appeared, about the possibility of an article concerning Chelsea House with a secretary not wearing any clothes and something like that, and, therefore, at some later date the article appeared.

I do not have any recollection of having discussed it with Mr. Steinberg after the item appeared.

Q Did you give Mr. Steinberg any professional advice with regard to the impact of such an article on Chelsea House's attempts to raise capital?

A Interesting enough, Mr. Fleming, my corporate department raised the question --

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Q Will you answer my question, Mr. Jackson?

A I am trying to. You are talking about legal advice, are you not?

MR. FLEMING: Could you repeat the question.

(Question read.)

A Yes.

Q What advice was that?

A My advice was that there might be a problem if the article in fact appeared at all in that the SEC might take the position that with the company in registration at the time the article appeared, it might be thought by the SEC to be an effort to pump up acceptability of the stock.

Q It was not your opinion then, that the article would not in any way affect access to private capital?

A Not at all. If it was I certainly never told him that.

Q Now, am I correct that the figure for April 30, 1969 show a net income after taxes of $127,724 for the six months from November 1, 1968 to April 30, 1969?

A April 30, 1969?

Q Contained in the financial attached to the prospectus.

MR. GLASS: Page 6.

A What is the question, Mr. Fleming, please?

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Q Am I correct that the financials included in the prospectus show a profit, net income for six months ending April 30, 1969 as $127,724?

A Well, the income before the extraordinary item is $106,000.

There was a $21,000 item which has to do with income tax reduction resulting from utilization of a loss carry forward whichincreased the income from $106,000 to $127,000 So the operating income would have been $106,000 for the period ending April 30, 1969.

Q The net income was $127,724, your point being that it included the extraordinary item?

A The net income including the extraordinary item.

Q Is it $127,000?

A That is right.

Q And the comparable figure for the full year ending October 31, 1969 was a loss of some $30,000, and that had been contained in the audited financial statement as of October 31, 1969, is that correct?

A You say comparable. It is not comparable. If you want to know what the loss was for that year, it is described as $30,318. That is the net loss for that year.

Q Now, that loss, $30,318, was for the entire year, November 1, 1968 through October 31, 1969, is that correct?

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A That is correct.

Q And that since the company reported net income of $127,000 for the first six months of 1969, that would evidence that the company lost some $157,000 for the last six months of 1969, is that correct?

A No, I wouldn't look at it that way.

If you want to compare the operating,or the loss before the extraordinary item, it would be $106,000 on the one hand and $30,000 on the other.

Q Is it your position as a matter of generally accepted accounting principles the extraordinary item would not be included in the year ending figures?

A No, not if you are talking about operating income. You can add any two numbers together but if you are trying to compare operating income that is the comparison I would make.

Q It is your opinion, Mr. Jackson, that in figuring the income or loss for the six months ending April 30, 1969, the extraordinary item could be added but if you are figuring year end income or loss the extraordinary item would be disregarded? Is that your position?

A I think so.

Q In any event, taking your assumption to be correct, the company earned $106,000 in the first six months of 1969, is that correct?

A That is the audited report, yes.

Q And it ended the year with a $30,000 loss?

A That is correct.

Q Even accepting your assumption that the extraordinary item would not figure into the year end figures, that is the assumption, the company had lost some $136,000 in the last six months of its operations, fiscal 1969?

A Well, I can't tell that but certainly that was the kind of turn-around. I don't know what kind of closing entries would have resulted in that adjustment.

6-3 Q Mr. Jackson, if I might cut you off, you said that you had available at the time you invested in this stock, telling Steinberg in late March 1970 you wanted to close and the closing on April 10, 1970, you testified that you had available to you among other things the prospectus and the accompanying financial statement of July 1969 and the year end financial statement audited by Price Waterhouse showing the financial condition of the company as of October 31, 1969, is that correct?

A That is certainly true.

Q Based on those figures available to you, it shows the company earned $106,000 through operation the first six months of fiscal 1969 and a loss of $136,000 on operations in the last six months of 1969, is that correct, based on

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those figures?

A No, Mr. Fleming.

Q All right, that is an answer.

Now, going back to the figures included in the prospectus, am I correct at page 6 in the consolidated statement of operations, sales are reflected for the six months ended April 30, 1969 as $1,005,373?

A Those are the gross sales.

Q Am I correct that it is expressed throughout this prospectus that a majority of the gross sales came from the sale of a single book, the 1897 Sears Roebuck catalog?

A That is correct.

Q In fact, on page 7 in the text --

A Yes.

Q -- it states that the increase in sales and net income during the six months October 31, 1968, six months ending April 30,1969, a comparison with the previous period is attributable primarily to the following factors:

1, in July 1968 the company commenced marketing the 1897 SearsRoebuck Catalog which produced sales of $269,000 from July 19, 1968 to October 31, 1968 and $587,000 during the six months ended April 30, 1969; is that correct?

A That is what it says.

Q That as a matter of fact, from the very prospectus

available to you and for which your firm was legal counsel in the preparation of, more than one half of the gross sales for the six months ended April 30, 1969, would reflect to be a profitable period, again from the sale of a single book?

A Yes, that is correct.

Q And you understood that, did you not?

A Yes, I did.

Q When you spoke to Mr. Steinberg about the business of the company did you ask him how the Sears Roebuck catalog was doing?

A I don't think so.

Q How did you testify on your direct examination that prior to the receipt of the 1969 figures from Price Waterhouse Mr. Steinberg was optimistic about results?

A I don't know if I testified to that, but I think he was.

Q And he so communicated that optimism to you?

A He did.

Q He expected the company would make money for the year, is that correct?

A He expected the company would show a profit for the year.

Q And the year we are talking about is fiscal year ending October 31, 1969?

A That is correct.

Q And that is the year during the first six months of which the company, according to your figures, had earned $106,000; is that correct?

A Mr. Fleming, if you want to so accept my figures you will have to define them the way they are defined in the registration statement. They are defined in a specific way.

I thought the company had made a profit during the first six months' period.

Q Of $106,000?

A They made an unaudited profit of $106,000. That is basic accounting, that the year-end closing increases determine whether or not the company is going to make a profit for the year, regardless of what happens in the first six months' period. If the first six months shows a profit for work in process, the accountant, at the close of the year, can close that out, thereby eliminate the profit the first six months without anything happening. The only way it ever shows up is when you have a reconstituted balance sheet comparing the -- restating what happens for the period ending October 31, 1969.

He could have done it, unaudited, because they did not have the closing entries to show what happened.

Q Well, let me ask you again, you said that one of the things that was available to you when you made the purchase was this prospectus which contains the financial figures. I'm asking you, reading that prospectus, whether it was your judgment that the company for the six months ended fiscal 1969 had earned a plus of approximately $106,000?

A I made no judgment as to how much they made.

was satisfied, regardless of the closing entries they would likely have shown a profit for the first six months even if it was audited.

Q And Mr. Steinberg expressed to you his optimism that the company would show a profit by year's-end?

A Yes, he did.

Q And when you received the audited financial statement of Price Waterhouse, it showed instead that the company had lost $30,000?

A That is correct.

Q Did you call Mr. Steinberg and ask him what had happened?

A I don't think so.

Q You were a director of the company?

A Yes, sir, I was.

Q When you spoke to Mr. Steinberg about participation in the purchase of Oppenheim's stock and when you asked him how business was going and when he said business was going great, did you ask him to explain why they lost money in 1969?

A I don't think so, Mr. Fleming. I have a recollection of having had a discussion with him about that subject some time between January and April, in which he indicated that something akin to what he testified to yest-

day, that is, the accountants could have gone either way -- they might have shown a small profit, they might have broken even. Instead, they conservatively with the year-end entries, that is, adjusting the closing entries, they ended up with a $30,000 loss. I did not ask why they tied it to the fact the company had lost $30,000 over the year's operations. It certainly was not the first new company that had lost money.

Q How long has Chelsea House been in business?

A Well, according to the statement of operations they apparently, I guess, had year-end business, to speak of, starting with -- it looks like 1968. Apparently they had actually begun as Chelsea House some time in 1966, although the operation was so small it is tough to tell.

Q Well you knew that from the registration statement, didn't you?

A Oh, surely.

Q So you knew the company had been in operation about four years?

A Oh, yes, but minimally.

Q I want to direct your attention to the balance sheet, or the two balance sheets, one for the period ending October 31, 1969, and the other, the April 30, 1959 figures as they appear on page 20 in the prospectus.

A (After examining) I have it.

Q Am I correct that the April 30, 1969 figures show a total amount of cash and accounts receivable of approximately $350,000 -- that would be $56,000 in cash, and $178,000 in accounts receivable?

A That is 200 and some-odd thousand.

Q Yes, approximately $250,000 in cash and accounts receivable?

A 238 -- 234 -- 235,000 -- that is what it says.

Q That is as opposed to approximately $350,000 in notes payable and accounts payable under current liabilities, is that correct?

A Current liabilities, notes payable and accounts payable were $270,000 -- 271; that is correct.

Q So that is the relationship of approximately 235 cash and accounts receivable to approximately 270-odd thousand in notes payable and accounts payable currently, is that correct?

A Sure.

Q Now, if I could direct your attenntion to the audited financial statement for the year ending October 31, 1969, am I correct that the year-end figures show a total of approximately $140,000 in cash and accounts receivable, currently receivable as opposed to some $650,000 in notes

and accounts payable currently?

A (After examining) I am sorry, Mr. Fleming, I was reading the statement and I lost the question.

(Question read by the reporter.)

Q How much did you say, notes payable?

A Notes payable and accounts payable currently approximately $664,000.

Yes, that is correct.

Q So as of April 30, 1969, you are essentially on a one-to-one ratio of cash and accounts receivable currently against notes and accounts payable currently, and as at the year-end, six months later, you have $140,000 approximately in cash and accounts receivable currently as against approximately $64,000 in notes and accounts payable currently; is that correct?

A I'm just trying to see if the footnotes have any bearing on what that means.

Anyway, you are correct in that when you add up the two items that you have described in current assets and the two items that you have described in the current liability area, you get the numbers that you have described.

Q And based upon those numbers, would you consider that the company's financial condition had improved or worsened during the six months between April 30, 1969 and

October 31, 1969?

A Well, I am just not sure if I am equipped to make that judgment as I sit here. I have equated current assets as against current liabilities as against a piece of current assets as against a piece of current liabilities, to determine what had happened -- I am not sure that adding the numbers up as you have asked me to do that I can answer the question.

Q Let us take another item on this financial statement, since we are talking about current assets.

Am I correct that the inventory of books increased from approximately $120,000 in the six-month period -- inventory?

A (After examining) The book inventory increased $120,000, that is right.

Q And the film costs, listed as inventory, increased approximately $130,000, is that correct?

A That is correct.

Q And those, of course, represent other current assets?

A They surely do.

Q Those certainly are not liquid assets?

A They are certainly not as liquid as cash.

Q Isn't it a fair statement that the increase in

inventory, to anyone looking at it, means that they were having some trouble selling books?

A Not entirely. All it shows is that they have increased the inventory.

Q Now, another item on this financial statement -- on the two financial statements -- and I direct your attention to liabilities, on page 20, advances from distributor.

A The liabilities, page 20 -- I am sorry, where are you reading from?

(After examining) "Advances from distributor," yes.

Q As of April 30, 1969, a liability of $65,000, is that correct?

A Yes, sir.

Q And that liability has increased over the next six months to a total of $233,000; is that correct?

A (After examining). Yes. Bear with me a minute while I look at Note 8 to which reference is made in the statement.

Q Yes, I would like to talk about Note 8.

(The witness examines.)

THE COURT: What page?

MR. FLEMING: Excuse me, your Honor?

THE COURT: What page are you on?

MR. FLEMING: I am looking at page 20 of the prospectus as opposed to the balance sheet.

THE COURT: Yes, I have it.

A (After examining) Okay, sir.

I am sorry, what is the question?

Q Well, my first question is, am I correct that a current liability for advances from distributors increased in the last six months of fiscal 1969 from $65,000 owing as of April 30th to $233,192 as at year-end?

A (After examining) That item certainly increased to that extent.

Q All right. Now let us turn to Note 3 to which reference is made in the year-end financial statement, the Price Waterhouse financial statement.

A I don't know what you are referring to. Weren't we just looking at the Price Waterhouse statement?

Q Yes, I am looking at that.

A I am sorry, wasn't your question directed to the item of Price Waterhouse? That is what I was looking at.

Q There are two financial statwements.

A Yes. I was looking at the one which showed as at April 30, 1969, compared to the one which is dated as October 31, 1969.

Q They are different, they are separate balance sheets.

A That is right.

Q One shows $65,000 in advances from distributors as of April 30th, which increased by year-end to $233,000; is that correct?

A Surely.

Q All right. And next to that entry, that is "Advances from distributor" as it appears in the year-end statement is a reference to Note 8?

A That is right.

Q I would like to question you about Note 8.

A Yes.

Q I am directing your attention in Note 8 to the third full paragraph.

A Yes.

Q "The Company has entered into several contracts calling for the development and delivery by the Company of manuscripts by specified dates." *** "The Company has not delivered three manuscripts by the required dates and new deadlines have been established. Respecting two of these manuscripts, the publisher/distributor has advised the Company that, should the revised deadlines not be met, it plans to exercise its right to cancel the contract. In that

event, the Company might have to refund approximately $153,000 to the publisher/distributor and the loss would be increased by $132,272 reflecting reversal of all income accrued on such contracts prior to October 31, 1969."

Have I read correctly, Mr. Jackson?

A Yes, sir, you have.

Q And I take it you read that footnote when you received the financial statements --

A Surely.

Q -- and prior to making your commitment to purchase the stock?

A Certainly.

Q Did you ask Mr. Steinberg whether those manuscripts as to which a new deadline had been fixed, which if not met might result in a loss, an additional loss of $153,000, plus $132,000 -- did you ask Mr. Steinberg if those manuscripts had been completed and delivered?

A I did not specifically ask Mr. Steinberg whether indeed he had been successful in meeting the new deadlines to which he had agreed.

Q Did you consider it material in your decision to purchase the stock?

A In light of my overall impression of the activities of the company from my discussion with

Mr. Steinberg, I was not concerned, and I assumed that the company had successfully met its obligations in that regard.

Q Mr. Jackson, you had these financial statements available to you. You were a director of the corporation; you were a lawyer for the corporation; your law firm had prepared the registration statement; you had reviewed the registration statement in detail and all of the details presented with regard to the business of the company.

Was the financial condition of that company material to you in March 1970 when you said to Harold Steinberg, "I will take as many shares as you will take" -- on your oath?

A Of course it was. What else would I buy it for if it wasn't material?

Q Might you buy it because of the plans for a public offering?

A Mr. Fleming --

Q No. My question is, might you buy it --

A The answer is absolutely no.

Q Were you satisfied, upon the published figures of this company which were available to you, some of which we have just described, that this company was in sound financial condition?

A Was I satisfied on the basis of the information

I had that it was in sound financial condition?

Q Were you satisfied on the basis of the financial statements you had available to you?

A The financial statements were not received by me in a vacuum, Mr. Fleming. I cannot answer that question in a vacuum. I did have conversations with both Mr. Oppenheim and with Mr. Steinberg. Viewing the financials in the context of what they told me, I was satisfied as to the soundness of the company, and certainly I did not think it would go bankrupt in two months, as Mr. Oppenheimer thought it would.

Q Mr. Jackson, referring you to the financial statement for the year ending October 31, 1969 --

A October 31, 1969, right.

Q -- it reports current assets, "Unbilled costs and accrued earnings on contracts in process in the amount of $87,077.

A Right.

Q Do you know what that represents?

A Well, I have to read notes to 2 and 8 to see what it means.

Q Did you read them at the time?

A I read all the notes at the time.

Q Do you have any recollection of what that item

means?

A Not without reading it now.

Q All right.

A Shall I read it?

Q Sure.

A (After examining.) Okay. I think the note is very explicit. I couldn't say anything more than what the note says.

Q What do you understand the $87,077 listed as "Unbilled costs and accrued earnings on contracts in process" to represent?

A So far as I know these are contracts that have been partially performed, that is, a portion of the income on certain contracts has been taken in.

Q Isn't it correct, Mr. Jackson, that this represents earnings which were accrued and was called a percentage of completion basis?

A Yes, I think so.

Q And isn't it a fact that it represents a figure not yet received but accrued as a result of work supposedly done?

A I think so.

Q So that $87,000 becomes an asset only upon completion of the work it represents; is that correct?

A No, that is not true, because if it were true it would not be included in the balance sheet -- Price Waterhouse would not make the mistake.

Q It is not a mistake.

A It is an asset. If you mean is it cash, that is something else.

Q It is not realized yet, is it?

A It is not liquid.

Q It is not cash.

A It is not cash but it is an asset.

Q And it is subject to a write-off unless the action is completed and delivered?

A Well, it is a year-end, it is not likely to be written off. However, it is conceivable that to the extent that at some future date the item is not completed it is susceptible of being written off.

Q Which is precisely the situation described with regard to the three manuscripts in Footnote 8, isn't that correct?

A Let me see what Footnote 8 says.

(After examining) It is a little different, but I suppose to the same extent, that if you do not complete the work it results in a negative factor, if that is what you mean.

Q Well, in fact Footnote 8 states, "In that event" -- that is, if the manuscripts are not completed and the distributor cancels the contract -- "In that event, the Company might have to refund approximately $153,000 to the publisher/distributor" --

A That is correct.

Q -- "and the loss would be increased by $132,27[illegible] reflecting reversal of all income accrued on such contracts prior to October 31, 1969" -- and that $132,000 would be a percentage of completion.

A Mr. Fleming, I am sorry, I have not followed all of that. If you are referring to the extent, that you have referred to items that were partially performed, to the extent that the company did not complete the performance, it might suffer a loss, a write-off of the assets on its balance sheet, and in other cases it might have to refund money.

Q And Footnote 8 states [illegible], from Price Waterhouse [illegible] in these instances the company had not met the required dates and cancellation was being threatened, is that correct?

A No, that is not what it says. It says it hasn't met the required date but the publisher has agreed to a new date, and if the company does not meet the new date

it might have to give back the money. If that is what you mean, that is what it says.

Q It speaks for itself.

Now, is there anything in these financial statements and the comparative financial statement particularly, that is, comparing the performance of the company, the first six months of 1969 with the performance of the company for the last six months of 1969, as reflected in the full year figures which encouraged you to expend your money in purchasing the stock in that company?

A There wasn't anything in the balance sheet -- you used the word "encouraged." There was nothing in the balance sheet that particularly encouraged me. I would rather say there was nothing in the balance sheet that discouraged me. I think that is the way I looked at it. Nothing here discouraged me. I am now prepared to receive information one way or the other.

I received information indicating to me that I ought to be encouraged, that the business was solvent, at or about the time I was investing my money; that I had no reason to be fearful; no reason to consider the possibility of the company going down the drain as soon as I gave Mr. Oppenheim my money and he was out.

Q Mr. Jackson, you told Mr. Steinberg that you h[illegible]

purchased some of Oppenheim's stock after you had had the March 13, 1970 meeting with Mr. Oppenheim, isn't that correct?

A Yes, sir.

Q All right. What information were you given from the time Harold Steinberg told you they were buying out Jack Oppenheim and you said you wanted some of it -- what information were you given which led you to conclude that the company was solvent?

A Since the time that Mr. Steinberg called me?

Q That is right.

A After that date?

Q No, from that date forward.

A Not including the conversation I had with Mr. Steinberg?

Q Including the conversation with Mr. Steinberg, what information did you receive which caused you to believe in the face of these financial statements, of what they disclosed, that the company was in good condition and solvent?

A I will eliminate from your question, as I understand your question -- it eliminates my conversation with Mr. Oppenheim?

Q That is correct.

A Okay.

Q While we are on that, Mr. Oppenheim did not, on March 13, 1970 ask you to buy his stock, did he?

A No, sir, he did not.

Q In fact, he never asked you to buy his stock, did he?

A Never did.

THE COURT: This conversation wasn't in any way related to stock?

THE WITNESS: No.

A The only thing that I received from Mr. Steinberg was, in response to my discussion with him about whether he was going to buy the stock, the amount of shares that he was going to buy, how the company was doing, whether or not the company was going to be profitable during the current fiscal year -- that is all.

Q You asked Mr. Steinberg whether the company would be profitable during fiscal 1970?

A Fiscal 1970. That is my best recollection now.

Q And he told you it would?

A Yes, sir.

Q And you relied on that?

A Yes, sir.

Q He had told you it would be profitable for 1969 had he not?

A Yes.

Q And it had not been?

A I already told you the explanation he gave me.

Q And it was not?

A Of course not.

MR. FLEMING: Maybe this will be a good time to stop, your Honor.

THE COURT: All right.

(Discussion off the record.)

THE CLERK: Court stands adjourned until 10:30 tomorrow morning.

(Adjourned to September 12, 1974 at 10:30 a.m.)

ARd

STUART A. JACKSON

v. 71 Civ. 1295

JACK OPPENHEIM

September 12, 1974
10:30 a.m.

(Trial resumed.)

MR. GLASS: Your Honor, before we start, I would just like to advise the Court that in accordance with the Court's instruction we have exchanged our briefs.

S T U A R T A. J A C K S O N, resumed.

CROSS-EXAMINATION

BY MR. FLEMING (Continued):

Q Mr. Jackson, I would like to ask you some more questions with regard to the financial statements contained in the prospectus and the financial statement for Chelsea's fiscal year ended October 31, 1969.

I direct your attention to page 6 of the prospectus.

A Right.

Q Am I correct this reflects sales for the first six months of fiscal 1969, that is for the period ending April 30, 1969, of $1,005,373?

A That is right.

Q I believe it was established yesterday that

some $573,000 worth of those sales came from the sale of the Sears Roebuck catalog?

A That is correct.

Q Now, directing your attention to the financial statement for the full year, fiscal year October 31, 1969, am I correct that the sales for the full year are reported at $1,197,501?

A That is correct.

Q So that that would reflect, am I correct, that between April 30, 1969 and October 31, 1969, the company's total sales had been approximately $192,000?

A If that is the result of the subtraction, that would be correct.

Q Now, would you agree also that the total of the accounts of notes and accounts currently payable as of April 30, 1969 approximated $270,000?

A I am sorry, you have to tell me what page that is on.

Q Page 20 of the prospectus.

A The total of notes payable --

Q And accounts payable currently.

A Notes payable was $102,000 and accounts currently payable was $168,000 so that is approximately $271,000.

Q And that the amount of notes and accounts

some $573,000 worth of those sales came from the sale of the Sears Roebuck catalog?

A That is correct.

Q Now, directing your attention to the financial statement for the full year, fiscal year October 31, 1969, am I correct that the sales for the full year are reported at $1,197,501?

A That is correct.

Q So that that would reflect, am I correct, that between April 30, 1969 and October 31, 1969, the company's total sales had been approximately $192,000?

A If that is the result of the subtraction, that would be correct.

Q Now, would you agree also that the total of the accounts of notes and accounts currently payable as of April 30, 1969 approximated $270,000?

A I am sorry, you have to tell me what page that is on.

Q Page 20 of the prospectus.

A The total of notes payable --

Q And accounts payable currently.

A Notes payable was $102,000 and accounts currently payable was $168,000 so that is approximately $271,000.

Q And that the amount of notes and accounts

currently payable had increased as of October 31, 1969, six months later, to approximately $664,000, is that correct?

A Notes payable was $358,000 and accounts payable and accrued expenses were $308,000. I don't know the breakdown, can't tell from this, the breakdown between accounts payable and accrued expenses.

Q Obligations currently payable would have increased to about $664,000, is that correct?

A Yes, but there is, if you read it, a footnote and one of the obligations described, I believe, is currently payable as a note that was not due until 1971 if I read this correctly. I don't know how it fits in there.

Q But would you agree there has been a substantial, if we compare the first six months of 1969 to the last six months of 1969, would you agree there has been a substantial decrease in the sales?

A Do you mean sales in the second half as compared to the first half?

Q Yes.

A Sales were $1,005,000 in the case of the first half and $192,000 worth of sales in the second half, that is correct.

Q And will you consider that a substantial decrease in sales for that six month period?

A I wouldn't call it a substantial decrease in sales. I would say there were substantially less sales in the second half than in the first half.

Q Will you agree also that during the same period of time there was a substantial increase in the company's obligations currently payable?

A Consistent with the terms described in the notes of October 31, 1969, yes.

Q Now, is it also true that there was a substantial increase over the last six months of 1969 in advances from distributors reported as $65,000 as of April 30 and $233,000 as of October 31, 1969?

A $64,000 as of April 30, 1969 and $233,192, again subject to the explanations contained in Note 8. That is certainly true.

Q On the face of the audited financial statement, particularly the balance sheet considering also the sales contained on the statement of loss and deficit, how in your opinion when you read these financials was Chelsea House going to meet these obligations?

A Well, one of the biggest obligations, Mr. Fleming, was as you pointed out the note payable described in Note 6.

If you read the history of those notes as they

are described, there were an entire group of notes apparently which were due on an earlier date than the date described in this particular statement.

Then notes were rolled over for 90 days and one of the notes was rolled over to 1971.

In the ordinary course it would have been expected that these notes would be continued to rolled over on a 90 day basis. Witness the fact that one of the notes had been rolled over for approximately two years. So I certainly was cognizant of that.

In addition, it is not uncommon for -- at least in my limited experience -- for a new company to have to borrow money to increase inventory and that is exactly what happened in this case. The company was in the book-selling business. You have to borrow money to print books so that you can sell books. This company was in the film-making business. You have to borrow money to make films so you can sell films and that is my understanding of how the company intended to operate.

(Continued on next page.)

Jackson
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Q Let me ask you, was it your understanding that the company intended to meet its obligations by further credit?

A Well, further credit -- if you mean by "further credit" rolling over --

Q My question is, is it your testimony that you expected the company to be able to meet its obligations by further credit?

A If you mean by "further credit" continuing to roll over the notes payable, yes.

Q Rolling over notes payable would not increase the cash position of the company, would it?

A No, sir, it would not.

Q And it would not allow the company to pay off its accounts payable, would it?

A No, it would not allow it to pay off its accounts payable but if it did not have to pay the notes payable they could use the proceeds from the sale of the inventory to pay the other accounts.

Q By the way, I take it you are familiar, from your testimony, with Chelsea House's relations with its banks?

A Oh, not at all -- only to the extent that I got the information from reading the material you gave me. I

do not know anything about the relation with the banks. I am just reading the notes in the registration statement and the notes in the balance sheet. I don't know anything about the bank -- I don't know which bank they used.

Q Did you know whether the bank would roll over the credit this year?

A No, sir, I did not know it. I expected it would happen in the ordinary course.

Q Is it your testimony that the accounts payable would be met by sale of inventory?

A In part, yes.

Q How else would it be met?

A I don't know. I assume it would be met out of the operations of the business.

Q Isn't it true, Mr. Jackson, that the inventory in substantial part as reported in this financial statement represented books and films which were not even completed?

A I don't think that is true of books. It is certainly true in part about the film, but I think even the films represent -- the film inventory included partially completed film, and to the extent that the films did not include completed films I knew that they had partially completed films, and as you probably know historically these things are carried at what they call lower of cost or market.

That means they are not carried at the retail price.

Q Can I direct your attention to Note 9 in Price Waterhouse's statement of financial condition for the year ending October 31, 1969?

A All right.

Q I assume you read that note?

(Witness examines.)

Q Could you read it now aloud?

A Well, it says, "Inventories of books are valued at the lower of cost (first-in, first-out basis) or market. Major classificiations at October 31, 1969 are as follows:

"Bound books $ 64,535

"Work in process 216,897."

Q So that as a matter of fact, in terms of the book inventory almost precisely 75 percent represented books which were not yet finished as of October 31, 1969, is that correct?

A As of October 31, 1969, absolutely true.

Q And as a matter of fact, the preceding note, Note 8, as we discussed yesterday, showed that there had been -- that the company had been late with regard to certain manuscripts on specified delivery dates; isn't that correct?

A They had been late, and they had new dates for

delivery, that is correct.

Q And it is stated that if they did not meet the new dates there would be a cancellation; is that correct?

A Let me just read that.

(After examining) 8 says if it doesn't meet the new date the publisher, whoever it is, intends to exercise the right to cancel, and the company might have to refund the moneys described in Note 8.

Q With regard to the film inventory which was going to be used in your opinion to pay for notes payable, at the least, assuming that they could roll over the notes payable, Note 10 reflects 16-millimeter films with an inventory value of $278,777, and 8-millimeter films of an inventory value of $122,051; is that correct?

A That is net of amortization, that is correct.

Q And the note continues to state that ten of the 16-millimeter films were in process, still in process as of October 31, 1969?

A That is right.

Q And it states also that "There were no sales of 8-millimeter films, a substantial portion of which were in process" -- is that correct?

A Yes, that is what it says.

Q Now, do you agree that one definition of

insolvency is a company's inability to pay its bills as they become due?

MR. GLASS: Objection, your Honor. His idea of what insolvency is has no relevance. If he wants to ask what he felt about the condition of the company, that is proper.

THE COURT: His opinion whether it was or was not solvent is unfair --

THE WITNESS: I think it is a legal definition of insolvency, if you cannot pay your bills as they become due.

Q One of your claims, am I correct, with regard to Mr. Oppenheim is that he did not disclose to you -- and I take it you had no way of knowing -- was in a critical cash position and might be insolvent?

A Not only did he not disclose that, Mr. Fleming --

Q Will you answer my question?

A What is your question?

(Question read by the reporter.)

MR. GLASS: Your Honor, that is two questions, and I think the witness should be entitled to answer each.

THE COURT: Answer each one.

A Mr. Oppenheim did not tell me that the company was insolvent.

Q And that is one of your claims of deception in this case?

A Yes, that is one of them, certainly.

Q And I take it it is also one of your claims that you had no way of knowing that this company was or was on the verge of insolvency?

A Yes, that is right.

Q Now --

A You understand I am speaking about the end of March, the beginning of April 1970.

#2 Q Yes, immediately after you had read carefully Price Waterhouse's financial statement for the full fiscal year ending October 31, 1969; isn't that correct? Yes or no.

A No, that is not necessarily true. I read that Price Waterhouse statement when it came in in January 1970. I spoke to Mr. Oppenheim in March 1970.

Q All right.

A (Continued) When he told me everything was fine.

Q I accept that amendment, Mr. Jackson.

You recall filing an affidavit in opposition to summary judgment in this case?

A Yes, I am sure I did.

Q And do you recall stating that it was not

alarming to you for a new and growing company to have a loss of $30,000 for a full fiscal year?

A If I said that -- I don't remember saying that, but if I said that, it sounds like I would say it.

MR. GLASS: May Mr. Jackson see that?

MR. FLEMING: Yes, I was about to.

Q I direct your attention to the sentence on page 5:

"In my experience, however, it was not alarming for a new and growing company to have a loss of $30,000 for a full fiscal year" -- is that correct?

A I said it in the content of that entire paragraph.

Q I understand. But did you say that?

A If you read the next sentence with it, please.

Q On what basis --

MR. GLASS: Your Honor, in fairness, may he read the next sentence?

MR. FLEMING: All right, let him read the whole thing.

A After that sentence --

Q Why don't you start here (indicating)?

A Okay. After reading the sentence that you read: "Such a company could readily become successful

so long as there was private financing for its operations, a good climate for a public offering of its stock and a market for its products. The $30,000 loss did not alarm me because I knew that Mr. Norman had invested hundreds of thousands of dollars in the business, that distributors with whom the company dealt had advanced it substantial credit and that investment banking concerns had demonstrated keen interest in the company."

THE COURT: I thought you did not know the bank.

THE WITNESS: No, I said "investment banking concerns," your Honor. Those are the underwriters.

THE COURT: Oh, I thought you mentioned a bank.

THE WITNESS: No. If I said "bank" I should have said "investment banking concerns." I did not know the bank.

Q Mr. Jackson, on what basis did you find this company to be a growing company, in view of the comparative figures for the first six months of 1969 and the last six months of 1969?

A You mean in light of those figures?

Q Yes.

A Well, I thought it was a going company in light of the nature of the products which the company I thought was successfully turning out. That was my understanding.

The fact that the company --

Q On what basis did you understand that the company was successfully turning out these products --

A My conversations.

Q -- based upon these financial statements for the six months period in question?

A Yes, but, Mr. Fleming, the financial statements only show the sales of these particular products. I did not think that they had at the very beginning to make money on the product that they were turning out. They were turning out films of a very high and sophisticated nature. They were turning out films to be utilized in The History Machine. They --

Q Did you --

MR. GLASS: May he finish?

MR. FLEMING: I'm sorry.

A (Continued) They were turning out reference works which were in great demand, and I understood, from my conversation with Mr. Oppenheim that the company was successful in creating these particular products and that in his opinion these things were going along famously. That was my impression in April or March of 1970 of why I thought this company was a growing concern.

Q What films did the company manufacture?

A Well, I understood that in connection with The History Machine the company had prepared about 55 films.

Q What was the name of one film?

A I don't remember the names of any of them.

Q All right.

A They were --

Q That is my question.

A They were films related to the period. I don't think they had names.

Q I see.

A Okay. In addition, The Universe-at-Large, which was a separate film company geared to turning out films of greater length than the ten-minute length included in The History Machine, was working on films. I remember there was a film about, I think, Cage, the American musical composer.

There was a film about the roots of the cold war.

There was a film being worked on about China and Mao.

There was a variety of these really sophisticated films which I believed, after talking with Mr. Steinberg and Mr. Oppenheim, there was a successful and substantial market.

Q Had they sold any?

A I really don't know, sir. According to Mr. Oppenheim, they had.

Q Mr. Oppenheim told you they had sold them?

A He told me, sir, describing these projects, that everything was going along famously and led me to believe that all of them entailed in -- that everything was going along famously, completely the opposite of the company about to fall apart.

Q Did you ask --

THE COURT: That was Mr. Oppenheim?

THE WITNESS: Yes.

THE COURT: When was this?

THE WITNESS: When he came to see me.

Q Now, Mr. Jackson, it was on that basis that you characterized this as a new and growing company, is that correct? Yes or no.

A Yes, I think so.

Q You then wrote in your sworn affidavit, "Such a company could readily become successful so long as there was private financing for its operations, a good climate for a public offering of its stock and a market for its products."

Now, to your knowledge, was there any private

financing for its operations available?

A There was private financing in the form of bank financing all the time.

Q Were they getting new loans from the bank?

A Obviously.

Q Why do you say obviously?

A Because, as you pointed out to me, the accounts and notes payable in April of 1969 were only $102,000, and by October 1969 those notes had increased to $358,000, at least one of which was not due until 1971.

Q So the private financing you were referring to is bank loans?

A Yes, sir.

Q The next question: "a good climate for a public offering of its stock."

Did you consider March 1970 a "good climate for a public offering of its stock"?

A No, sir. I did not.

Q And as a matter of fact, Bache & Company, upon learning the year-end figures in January of 1970 had backed away from even a private placement, isn't that correct?

A That is true.

Q And, finally, "a market for its products" -- is that correct?

A Yes, sir.

Q And based upon the financial statement that you had read, upon what evidence did you find a market for its products?

A Well, the very fact that there were sales indicated that there was a market for its products, but I did not rely upon what I found in the October 1969 balance sheet for feeling as to whether or not there was an appreciation for its products six months later.

Q It evidenced to you that there was a market for its products, that its sales had been $1,000,000, principally from one book for the first six months of the year, and only $192,000 for the next six months of the year?

A Six months prior to the time that I was called upon to make a judgment, yes.

Q And, finally, the $30,000 loss did not alarm you because you knew that Mr. Norman had invested hundreds of thousands of dollars in the business, is that correct?

A Yes, sir.

Q And in fact, Mr. Norman, to your knowledge, was a very rich man, is that correct?

A What he told me.

Q Didn't you testify in your deppsition that you knew him to be a very rich man?

A Only by what he told me. Sure, I testified to that -- that's what he told me.

Perhaps I also formed the opinion after visiting his estate.

Q And I think you testified in your deposition that you had a certain respect for very rich men?

A I don't think I said that, Mr. Fleming.

MR. GLASS: One minute. May we have the page and the date of that deposition?

MR. FLEMING: We will get it.

MR. GLASS: Where are you reading from? On page 41?

May the witness see that?

MR. FLEMING: Yes, I will read it to him. It is a deposition taken of Mr. Jackson on December 1st, 1971 at our offices.

Q At page 41, this question:

"Do you still have the same opinion of Mr. Norman?

"A Well, over the -- ever since the company filed in bankruptcy, my view of Norman's ability to perceive what may be going on has changed somewhat. But he is still a very rich guy, and I have a certain amount of respect for rich people."

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Did you so testify?

A Yes, sir, I did say that.

(Continued on next page.)

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MR. GLASS: In all fairness, can the witness be permitted to read the forepart of that explanation which discusses what he felt about Mr. Norman in March of 1970?

THE COURT: You can do it on redirect examination.

MR. GLASS: I was just trying to save time.

Q As a matter of fact, Mr. Jackson, was it not your knowledge of Mr. Norman's wealth and your knowledge of his substantial stock interest in Chelsea House which convinced you at least in part that your investment was safe because if the situation became bad, Mr. Norman might well take steps to bail out the situation?

A I just can't answer that yes or no.

Q Now, you also note in your affidavit that one of your causes of optimism was distributors with whom the company dealt had advanced substantial credit, is that correct?

MR. GLASS: May he see the affidavit?

MR. FLEMING: I just read it.

MR. GLASS: Would you read what he said instead of paraphrasing it?

MR. FLEMING: I just read it directly.

THE COURT: Don't you have a copy?

MR. GLASS: I don't have it in front of me, no.

THE COURT: Why don't you?

Q "The $30,000 loss did not alarm me because Mr. Norman had invested hundreds of thousands of dollars in the business and the distributors with whom the company dealt had advanced substantial credit."

A All right.

Q Did you know that the distributors, that Chelsea House was in substantial debt to its distributors?

A I knew that what I said was accurate in the affidavit.

Q Did you know that Chelsea House was in substantial debt to its distributors?

A Well, I don't know about the word substantial. I knew that Chelsea House had received advances from distributors in the amount described in the various financial documents.

Q Did you use the word substantial credit in your affdavit?

A If you read it to me, I did. Is that what it says? Did I use the word substantial? I don't have it before me.

Q All right, here we go (handing to witness.)

A I knew that, right.

Q Did you use the words substantial credit?

A Yes.

Q Fine.

A Of course.

Q And did it continue "and investment banking concerns have evinced a keen interest in the company"?

A Yes, sir.

Q As of March 1970, what investment banking firms were evidencing keen interest in the company?

A As of March 1970, no investment banking firms were evidencing keen interest in the company because as of March 1970, invesment banking concerns had evidenced interest as I said in the affidavit.

Q Did you offer to buy Oppenheim's stock in July of 1969 or March of 1970?

A Actually April, April 1970.

Q You were not in the deal until April 1970?

A I was not in the deal until April 10,1970. That is when I signed the -- agreed to buy.

Q By the way, was Chelsea House reasonably prompt in paying its bills for legal services?

A I don't really know.

Q Isn't it a fact that the Royall Koegel firm filed a claim in bankruptcy for $25,000 in unpaid bills?

A I think that is for unbilled time.

Q Unbilled time?

A I think they paid their bills as billed.

As I recall it, we had some sort of an arrangement where they paid something like $1,000 a month and at some point in time the accounting department would get up a bill for the difference between the total time rendered and the money received and they would send a bill and that event never took place because the company filed in Chapter XI before that happened, so that particular accounting could not take place until the Chapter XI.

Q By the time the company filed in Chapter XI, which I believe was July 2, 1970, the Royal Koegel firm had been representing Chelsea House for more than a year, is that correct?

A Well, had been doing work for more than a year.

Q You had been acting as outside general counsel for more than a year?

A That is correct.

Q Having replaced Rifkin firm?

A I don't know that we replaced. I think the Rifkin firm was out when we came in but certainly we came after they did.

Q It is your testimony that Chelsea House was paying $1,000 a month during this period of time with the

understanding that at some time in the future they would be billed for time worked?

A That is the standard arrangement as I recall it. This was no special arrangement for Chelsea House.

Q With your clients, they pay you $1,000 a month and some time in the future you send a bill for the work?

A Not necessarily $1,000. It might be $10,000 a month, but the arrangement was generally everybody was on some sort of retainer and at the end of some period, depending really, I suppose, on the amount of money due, the accounting department would get up a bill and send them the difference between the total time consumed on the account and the money actually paid as a retainer.

Q Was the agreement as between you and Mr. Steinberg and the people at Chelsea House that they would pay $1,000 a month until they were able to obtain a public underwriting and funds, at which time they would pay their bill?

A It could have been that way, I don't know. It might have been. I don't remember 1970. There may have been a lot of underwritings that were handled in that manner but I don't remember the exact deal with Chelsea House.

Q You made it, didn't you?

A Yes.

Q Mr. Anderson didn't make it?

A No, I don't think so.

Q You testified on your direct examination that after January 1st, after Bache backed out on the deal, you told Steinberg about getting Price Waterhouse in and getting them on the updated financial condition?

A I don't think I told them to get them in, I told them to keep them in there.

Q And to keep them up to date on the financial condition?

A Yes.

Q At any time between the first knowledge that the Oppenheim stock was available for sale, which I understand came from Steinberg in late March or early April 1970, at any time between that moment and April 10 when you signed the contracts and the notes, did you inquire of anyone at Price Waterhouse as to the condition of the company?

A No, sir, they wouldn't know.

Q Weren't they conducting a stub audit?

A Yes, but that was for the period ending April 30.

Q Weren't they conducting a stub audit?

A For the period ending April 30, yes. This was the early part of April. This would take three months

after the close of the period to get it finished. They wouldn't have the slightest idea in the middle of April what the results for the period ending April 30 were.

Q I quite agree they would not. But is it your testimony that the auditors at the company, engaged in a stub study, would not be able to give you some opinion as to the financial condition of the company as of the date that you asked them?

A Based upon my experience with Chelsea House and Price Waterhouse and the Chelsea House books, they would not have had the slightest idea in the early part of April as to what was going on in the early part of April.

The figures, remember, Mr. Fleming, the figures for October 1969 were not completed until the end of January 1970. There would be no reason to think they would be any different for this period.

THE COURT: Your familiarity with the Chelsea House books, what was that?

#2 THE WITNESS: Well, sir, I received a copy of this particular document, Exhibit -- I don't know the number now, but the financial statement of October 31, 1969.

THE COURT: You mentioned your familiarity with the Chelsea books.

THE WITNESS: When I say books, I mean the

report of the books contained in the Price Waterhouse report.

THE COURT: All right.

THE WITNESS: Transmitted in January.

THE COURT: Okay.

THE WITNESS: I can tell you, Judge, I never saw the books of Chelsea House until about two weeks ago.

Q To be clear, it is not therefore your testimony that you knew in 1970 that Chelsea House books were so fouled up that no auditor could give you any information from them?

A I did not know that, Mr. Fleming, in 1970.

Q My question is not knowing that, did you ask Price Waterhouse for any information about the financial condition of the company before you signed on April 10, 1970?

A I have already indicated I did not.

Q Even though you in fact had persuaded Price Waterhouse to take Chelsea House as an account, isn't that correct?

A Mr. Fleming, it wouldn't make any difference who the accountant was in there. My persuading didn't mean that I could get any information that didn't exist.

Q Isn't it a fact that you persuaded Price Waterhouse to take Chelsea House as a client?

A I explained yesterday exactly how I met Price Waterhouse and how they got together with Chelsea House.

It might be satisfactory to say that amounts to persuasion but that is what I did as I described yesterday.

Q Your testimony yesterday as I recall, and correct me if I am wrong, is that you called someone at Price Waterhouse and gave them Chelsea House's number?

A No, sir, that is not what I said. I said I met the managing partner of Price Waterhouse, who I had never met before in my life, on an airplane going to Mexico, and persuaded him to call Chelsea House if his firm was willing to represent people like Chelsea House and that was the extent of my persuasion.

Q You did agree that you testified in your deposition, page 84, I think --

MR. GLASS: Which deposition?

MR. FLEMING: The same deposition, the same day.

Q Line 22:

"The Witness; I think I secured Price Waterhouse -- that is, I introduced them to Price Waterhouse, and persuaded Price Waterhouse to represent them."

Did you make that statement?

A I did, sir, but my experience is as I described

yesterday, meeting him on the plane, nothing more.

Q But in any event, whatever your role in having Price Waterhouse accept the engagement from Chelsea House, you did not at the time you made this commitment to purchase, actually sign the agreement, ask Price Waterhouse what they knew about the present financial condition of the company?

A I did not.

Q Directing your attention once more to the balance sheet for the year ending October 31, 1969 --

A Okay.

MR. FLEMING: May I have a moment, please, your Honor?

(Pause.)

MR. FLEMING: I withdraw the question.

Q Mr. Jackson, you knew that these captions in the financial statement, advances from distributors, were obligations of Chelsea House, did you not?

A Yes, they had -- sure, they were only obligations of Chelsea House.

Q You knew that Chelsea House would have to pay that $233,000 reflected as advances from distributors?

A I didn't -- I knew that they had to pay but I did not quite underatand that they would have to pay regardless of the success of any of the particular books. I did

not understand that.

I thought that the advances were against specific books which would be repaid out of the revenues derived specifically from the sales of those books.

Q It was your understanding that unless the books sold there would be no obligation?

A My understanding was that so long as the manuscript was delivered and printed, Chelsea House did whatever it had to do, having received an advance from Random House that its obligation to repay was conditioned solely upon the revenues derived from any particular book for which there was a specific advance.

THE COURT: Where did you get this from, the New York Magazine article?

THE WITNESS: No, sir.

Q From the financial statement?

A Actually I got it from my reading of the prospectus, my reading of the prospectus and the financial statement in the sense that the arrangements between the other distributors, that is, for example, the footnote to which you referred me, where we talked about what the result is if Chelsea House does not deliver a particular manuscript.

Their obligation was to give a particular manu-

script and failing that, would have to turn back the money.

My understanding was that the distribution arrangement was identical, you delivered the book, you got an advance and your obligation to repay was conditioned solely -- it was a bookkeeping matter handled by the distributor.

He would get the money in the first event at any rate and the money that he would deliver to Chelsea House would be delivered only after deducting therefrom the moneys which he had advanced as to each specific book.

Q If some books were sold Chelsea House would not have to pay back the advance, was that your understanding?

A So long as Chelsea House delivered a book, yes.

Q Can you explain if that was your understanding why the advance from distributors were placed on the balance sheet as a liability and not as a contingent liability?

A To me it didn't make any difference, they were liabilities. I didn't appreciate the distinction enough -- I don't have any bookkeeping background and to me when you are considering whether they have to pay or don't have to pay, I guess, shall I say conservative accounting approach for the accountant is to claim it as a liability. I don't know how it should have otherwise been put on a balance

sheet. I can't tell you that.

Q Did you ask any questions about it seeing that the accountant might be able to tell?

A No, I had my understanding and I did not ask any questions.

Q And the $233,000 did not seem to be a material item in that financial statement?

A Not in the light of my expectation of sales which would be utilized to pay that particular amount.

Q Mr. Jackson, is it a fact that you have been in the past a director of between five and ten private companies?

A Is it a fact?

Q Yes.

A Yes, I am.

Q Have you owned stock in those companies?

A Yes, sir.

Q Have any of those companies gone public through the representation of Royal, Koegel and Wells?

A Yes, sir.

Q Have you dealt with auditors?

A Yes.

Q And reviewed registration statements?

A Certainly.

Q Read many financial statements?

A Yes, sir.

Q Are any of those companies presently bankrupt?

A No, sir, not as far as I know.

Q You are a director, am I correct? Have you not been a director of those companies?

A I thought you were asking me about historically--my history as a lawyer. Talking about at this moment? I don't know of any company I was a director of in bankruptcy. Is that your question?

#3 Q My question is, during your time as an attorney have you been a director of anywhere between five and ten private companies?

A Yes, sir.

Q And have some of those companies gone public under your representation?

A Yes, sir.

Q Any of those companies go bankrupt?

A Not as far as I know.

Q You have also been an officer in five or ten public companies?

A I have been secretary, that is the extent of my officership.

Q Financial statements are not something entirely

new to you?

A Certainly not.

Q There is no question that you are a director of this company, is there?

A No, sir.

Q No question that you knew Harold Steinberg?

A Yes.

Q No question that you knew Robert Hector, the Chairman of the Board?

A I certainly met him.

Q You knew Mr. Oppenheim?

A Yes.

Q And you knew Mr. Norman, one of the executive officers?

A I certainly did know him.

Q And in fact Mr. Norman was a principal shareholder, was he not?

A I think he was.

Q You in fact had been in his home?

A Certainly have.

Q And you knew Dr. Fred Israel?

A About as much as I knew Mr. Hector.

Q You knew Leon Friedman?

A Yes, Leon Friedman was house counsel. I

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certainly dealt with him.

Q You asked no one of these other than Steinberg at the time of your purchase anything about the financial condition of the company; is that correct? Yes or no.

A From the time of the purchase, Mr. Fleming, meaning at the end of March and beginning of April, up until the time I paid for the stock, the answer is I did not ask anybody except Mr. Steinberg, that is correct.

Q As a matter of fact, at the time of your deposition you had no real recollection of having even spoken to Steinberg about it, is that correct?

A That is correct.

Q You had no recollection of talking to Steinberg about the future of The History Machine or the film library project at the time of your deposition?

A I don't think I was asked that.

Q You were asked if your purchase of the stock --

MR. CLASS: Why don't you read from the specific page where he said it, with the Court's permission?

MR. FLEMING: I withdraw it, your Honor.

Q In addition to all of this you had introduced Herzfeld & Stern as a prospective underwriter for the company?

A Yes, sir.

Q You had attended meetings between Herzfeld & Stern representatives and Chelsea House representatives, is that correct?

A I attended an introductory meeting and a final meeting, yes, sir.

Q During those meetings at least some aspects of the business of the company were discussed, is that correct?

A Yes, sir.

Q It is also true, am I right, that with regard to Herzfeld & Stern, the company, including Mr. Oppenheim, refused to accept $7 a share as an offering price?

A Yes.

Q Am I correct that you also attended two meetings between Chelsea House and Herbert Young & Company with respect to a possible underwriting?

A Yes, I did, in November of 1969.

Q This would have been two or three months subsequent to the termination of the Herzfeld Stern efforts?

A Correct.

Q Herbert Young & Company in November 1969 was willing to underwrite only at a price of $7, isn't that right?

A That was, I believe, the price, the consider-

ation.

Q Once again?

A I heard Mr. Steinberg say six. He could be right. I don't know.

Q Once again, the company including Mr. Oppenheim, refused that?

A Yes, that is correct.

Q Finally, of course, you were aware of a possible relationship between Bache & Company and Chelsea House looking to a private placement?

A Yes, sir.

Q And you knew when Bache & Company heard that the company, Chelsea House, lost $30,000 for its prior fiscal year ending October 31, 1969, Bache & Company withdrew, is that correct?

A I knew Bache & Company withdrew. I can't tell you, because I wasn't there, why it was that they withdrew. But I knew that they had withdrawn.

Q Did Mr. Anderson tell you why they had withdrawn?

A He didn't tell me what you said.

Q He did not tell you that they were dissatisfied with the year-end figure?

A No, he never said that.

Q You also knew, of course, that Mr. Oppenheim's

stock was being sold at $3 a share?

A Yes, sir.

Q In fact, it was being sold on terms, was it not?

A Well, I knew that I was buying mine on terms and I suppose possibly I assumed everybody else was, but I don't know that.

Q What were the terms that you were buying on?

A Well, it was approximately, approximately one-third down, one-third at the end of one year, and one-third at the end of the second year.

Q So that since July of 1969 when Oppenheim thought that the company was valued at $10 and April of 1970, something caused Oppenheimer at least to sell out for one-third, for $3 a share, one-third down and the additional $2 over two years, is that correct, yes or no?

A I don't know why he changed his mind.

Q But that is what happened, as a matter of fact?

A If you mean he was unwilling to offer the stock--remember, this company was offering its stock to the public at a particular price on the one hand and Oppenheim was selling his stock privately on the other hand and those two are not related.

It is not the same kind of transaction.

Q In July Oppenheim thoutht that the stock was

valued at $10,is that correct?

A For the purposes of sale to the public. He was getting none of that, you understand that. The company was getting the whole thing.

Q He thought the stock was worth $10 a share to the public?

A He thought the stock, if the public wanted to buy, they would have to pay $10 a share and all the proceeds went to the company, yes.

THE COURT: That wouldn't affect the value of his own stock?

THE WITNESS: Surely it would in the sense that it would increase the value of the stock any time you put cash in the company. You increase the value of the stock but that didn't mean he was getting anything like that for his stock.

Q As a matter of objective fact in April of 1970, Mr. Oppenheim sold out his stock at $3 a share and according to you, one-third down and the rest over two years?

A That is correct.

Q You knew at the time you participated in the purchase of Mr. Oppenheim's stock that the company was engaged in negotiations, underwriting negotiations, with E. L. Aron and Company, did you not?

A Well, shall I say I knew they were talking to E. L. Aron. I don't like to use the word underwriting negotiations.

Q They weren't talking about lunch, but about a possible financing?

A That is correct.

Q Had you introduced E. L. Aron to them?

A Yes, I think I said yesterday there were two people locally in my town with whom I spoke about Chelsea House back in the spring of 1969. One was Mr. Brenits with Herzfeld & Stern and one was Jimmy Raffity, associated with Aron. And when, as things went along, the company was unsuccessful in finding underwriting, Mr. Steinberg again asked me to see what I could do and I communicated with Raffity and he went back and brought in the Aron people. That is what happened.

#3 Q During the March 13 conversation with Oppenheim, did you tell Oppenheim that E. L. Aron was looking at the company?

A I don't think -- no, sir, I don't think so.

Q Directing your attention to that conversation, March 13, 1969, is it your testimony that Oppenheim's complaint to you was that he was in artistic disagreement with Steinberg?

A That is right, and that Steinberg was an impossible person to work with. Those were the -- terrible personality conflicts between he and Steinberg.

Q Did he specify in what ways, to your knowledge, Steinberg was an impossible person to work with?

A Only to the extent that Steinberg wouldn't listen to me. Every idea I have Steinberg disregards.

Q Did he specify any idea that he had which Steinberg disregarded?

A No, sir.

Q That was the conversation?

A That was his conversation generally. I suppose he repeated the same thing over and over again. You haven't included the fact that he asked me would I intercede, could I be of assistance and my conversation with him.

Q You say Mr. Oppenheim asked you to be of assistance?

A Yes, sir.

Q Did he ask you to request Mr. Steinberg to accept Mr. Oppenheim's artistic ideas?

A Yes, to intercede on his behalf with Mr. Steinberg.

Q Did he tell you one single artistic idea which Steinberg rejected so you would have something to talk about?

A Not at all. He didn't ask me to speak about a specific idea, just generally. That he had a tremendous feeling of frustration about his entire role with the company and wanted me to speak to Steinberg, who, I got the impression from him, was the culprit.

Q But did he specify in what sense Mr. Steinberg was the culprit?

A No, sir, other than I have described to you this morning.

Q In what sense did he wish your assistance?

A The only thing I recall is that he said something like, "You are an outsider. Mr. Steinberg may listen to you. Will you please speak to him?" Something like that.

Q What did he wantyou to say to Steinberg?

A He wanted me to persuade Steinberg that he, Jack, had artistic ability, the creativity to seriously add to, what shall I say, the development of Chelsea House.

Q Did you know anything about Mr. Oppenheim's creativity or artistic ability?

A I think I told you yesterday that I thought that the management of Chelsea House had -- was really three or four creative people and Oppenheim was one of them. I always viewed Oppenheim on the same level as Steinberg.

I didn't think of him as an inferior of Steinberg.

Q It is your testimony during this 15-minute conversation, Mr. Oppenheim's request was a single one and it was essentially, would you call Harold or someone and ask them to give my artistic ability some credit?

A I don't know if he said call. He wanted me to intercede with Harold, call or visit with him, but wanted me to intercede.

Q But he was very rosy about the prospects of the company, is that correct?

A Rosy about the prospects of the company, notwithstanding his disagreement with Harold.

Q And I take it you drew the inference from what Oppenheim said that he considered its economic future to be sound?

A Absolutely.

Q And then within two or three weeks you were told that he was being bought out?

A I was told he was selling out, not being bought out.

Q But he was selling out?

A Yes, that is right.

Q At $3 a share on terms?

A $3 a share on terms.

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Q You asked no questions of anyone?

A No, sir, I didn't ask any questions other than those which I have described in my conversation with Steinberg.

Q Now, even though your only familiarity came from the registration statement and the financial statement for the year ending October 1969, is that correct?

A And my conversations from time to time with Steinberg, correct, and whatever Mr. Oppenheim told me in 1970.

Q Do you recall, Mr. Jackson, filing a petition in bankruptcy for $50,000 in legal fees for Royal Koegel's representation of the company in Chapter XI?

A I recall signing the petition on behalf of Royal, Koegel.

MR. FLEMING: May I have this marked, please.

xvx (Defendant's Exhibit F was marked for identification.)

Q I want to show you F for identification and ask you if your signature appears at the end?

A It does.

Q And that is a copy of the petition filed with the court in bankruptcy?

A It certainly looks like it.

Q I want to direct your attention to paragraph 7. I will read it to you.

"Prior to initiation of the arrangement proceeding, petitioner was partner in charge of handling the account."

A That is correct.

Q To whom Mr. Anderson reported?

A That is correct.

Q "Petitioner acted as counsel for the debtor in effectuating a public offering for its securities. As such, petitioner was well acquainted with the business and financial affairs of the debtor and well qualified to act as its counsel."

A Yes, sir.

Q Did you so state?

A Yes, sir.

Q Do you so swear?

A Yes, sir.

Q In explaining the arrangement, did you state at paragraph 10,"because of a down-turn in the market in early 1970 a possible public offering of debtor's shares was not possible."

A Certainly true.

Q "Moreover, cutbacks in government spending for

educational purposes led to a similar down-turn in the educational market, the primary market for debtor's products."

Is that correct and did you so swear?

A Yes, sir.

Q Did you also state at paragraph 12, "beginning in mid June, 1970 until petition was filed on July 1, 1970, I and another associate in the office had virtually daily meetings with officers and directors of the debtor to determine the best course to follow."

A Yes, sir. Yesterday I wasn't asked any questions but I certainly signed that.

Q Did you testify yesterday that you got a quick call from Norman that said they had to go into bankruptcy right away, at the end of June?

A Yes, that is right.

Q You know that Mr. Oppenheim's memorandum, the one you say you did not see and which had you seen you would not have bought the stock, you know it contains a reference to a conversation with you in which you said Herbert Levine complained about the New York Magazine article? You know that is in the memorandum, do you not?

A Well, without looking, yes, I am sure there is a reference in there to that. I remember that came up yesterday.

Q Not in this form, Mr. Jackson.

This is not numbered, but it is on the eighth page.

A Right.

Q The first full paragraph.

"Underwriters end up walking away from deals because they do not have confidence in Harold being able to lead the company to financial soundness even though they have faith in our product line. I cite Earl Brownstein of Herzfeld & Stern and Stu Shuman of Aron and Company as examples."

#5 "Stu Jackson indicated a similar reaction on the part of Hiller Levine. Those are only the instances where it has been stated that Harold was the problem at Chelsea House so far as the financial community was concerned. Others simply walked away without stating their reasons."

Did you so indicate such a reaction on the part of Levine to Mr. Oppenheim?

A No, sir.

Q Did you have any discussion with Mr. Oppenheim except at March 13, 1970?

A At any time?

Q Yes.

A I assume, of course -- I believe I saw him in connection with the Herzfeld Stern discussions. I could have seen him in connection with the discussion of the film video litigation. I could have seen him when the letter of comments came in.

I have no specific recollection of having seen Mr. Oppenheim though, other than at the -- I have no specific recollection of having seen him except I am sure he was at the Herzfeld Stern final meeting which I attended.

Q And the meeting of March 1970, to which you testified?

A Is there any question about that?

Q I am just asking.

A Of course.

Q Do you have any recollection of meeting with Mr. Oppenheim between January 1, 1970 and April 10, 1970, other than on March 13, 1970?

A I have no specific recollection of having met Mr. Oppenheim other than as you have described it.

Q I asked you yesterday if you discussed the New Yor. Magazine article with Herbert Levine and Young & Company. Did you testify that you had not?

A My best recollection is I had not.

Q What is your testimony, you did not or did?

A It is still my best recollection I had not.

Q Do you recall being asked the same question in your deposition, page 134:

"Q Did you discuss that article or do you recall discussing that article with Hiller Levine of Young & Company prior to your purchase of Jack's stock?

"A Oh, I don't know."

A I haven't said anything to the contrary this morning.

Q Was that your answer back on January 5, 1972, that you did not know whether you had discussed it or not?

A I will be honest with you, I don't know who Mr. Hiller Levine is. If that is a typo and is meant to be Mr. Herbert Levine, I said what I said then and I don't know -- and my best recollection still is --

Q Mr. Jackson, is there a Hiller Levine with Herbert Young & Company?

A I don't know, Mr. Fleming.

Q Do you have any doubt that is a typo and Hiller means Herbert Levine at Young & Company?

A I don't know. It wouldn't make any difference. I said what I said then and I say it now.

THE COURT: Why don't you leave it the way it is?

a30ARd Jackson-cross

Q Am I correct, Mr. Jackson, you have not returned the 12,500 shares which you received back in June of 1969 from Chelsea House?

A Well, I really don't know whether I have physically returned the shares or not. Mr. Anderson tells me that I have but I really don't know.

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mkcg 1 Jackson-cross

Q As a matter of fact, did you not testify in your deposition that as of the date of the deposition, December 1, 1971 no one had ever asked you to return those shares?

A I think that was true.

Q Well, hadn't your partners asked you to return the shares of stock?

A No, of course not. Asked me to return the shares? Certainly not.

MR. FLEMING: I have nothing further, your Honor.

THE COURT: We will take a short recess.

(Recess.)

MR. FLEMING: If your Honor please, I have two applications. We have Mr. Norman under subpoena -- this is Mr. Norman (indicating). He has a very important meeting at 12:30. Mr. Glass believes that the balance of his case will probably consume the rest of the morning. Would it be convenient to the Court if Mr. Norman came back at 2:30? He will be our only witness?

THE COURT: That is all right.

MR. FLEMING: The second thing is we have the promisory notes in question, and the purchase agreements in question which I would like to have marked and to offer. Mr. Glass and I have no dispute as to these.

THE COURT: They will be received.

(Marked Defendant's Exhibits G, H, and I in evidence.)

xxx

THE COURT: Have you concluded your cross-examination?

MR. FLEMING: Yes, we have, your Honor.

MR. GLASS: May I have redirect examination of Mr. Jackson, your Honor?

THE COURT: Yes.

MR. GLASS: Before I commence, I believe that the stipulations between defense and plaintiff contained in the pretrial memorandum will be incorporated by reference to this case; is that correct?

MR. JACKSON: No objection.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. GLASS:

Q Mr. Jackson --

THE COURT: That is covered by paragraph C of the pretrial order?

MR. GLASS: Yes, thank you.

Q Mr. Jackson, you were asked to look at the October 31, 1969 certified financial statement of Chelsea House for the year, the entire year, and you're also asked to look at the unaudited financial statement for the six months ended

April 30, 1969; is that not correct?

A That is right.

Q And Mr. Fleming selected two items from under the caption "Current Assets", and selected two items from under the caption "Current Liabilities", and he asked to do some arithmetic yesterday; was that not correct?

A Yes, sir.

Q And when you pulled out those items from the entire caption, on the basis of that arithmetic, I believe you testified, as between those numbers, there was a difference of a half million dollars; is that not correct?

A That is correct.

Q But when you take the entire item called "Total current assets", it shows in the October 31, 1969 balance sheet approximately $966,000; is that not correct?

A Correct.

Q And when you take the "Total current liabilities", it shows approximately $907,000, does it not?

A That is correct, sir.

Q Indicating that there are approximately $60,000 more of current assets than there are of current liabilities, and so that in speaking --

A Right.

Q -- in terms of the ratio of current assets to

current liabilities, the ratio is approximately 1-to-1; is that not correct?

A That is right.

Q And that is that you saw when you looked at this balance sheet in January of 1970?

A That is right.

Q Now, this company is on a fiscal year basis -- fiscal year ending October 31, 1969?

A That is right.

Q The first six months of the fiscal year of this company ends on April 30, 1969, does it not?

A It does.

Q And that first six months includes Christmas season, does it not?

A It does.

Q And the last six months does not include the Christmas season.

A That is correct.

Q And you were not asked,were you, whether or not the business of Chelsea House, in terms of trade books, is a seasonable business, were you?

A No, sir.

Q You are not a certified public accountant, are you?

A I am not even an uncertified public accountant.

Q Your principal occupation, or your principal area of responsibility in Rogers and Wells in 1969, and more particularly the first part of 1970, was that of a litigator, was it not?

A That is right.

Q And you did not relate registration statements, did you?

A No, sir, never did.

Q And you do not consider yourself an expert in accounting and auditing, do you?

A Not at all.

Q And when you looked at the October 31, 1969 balance sheet, which Mr. Fleming showed you, the company did not have a negative net worth, did it, under the caption "Stockholders Equity"? As a matter of fact it had a positive --

A Positive net worth, taking into account all assets and liabilities, of $85,000.

Q Now I believe that Mr. Fleming asked you if you knew why Bache and Company declined to do a private placement for Chelsea House, did he not?

A He did.

Q In words or substance. And I believe you stated that Mr. Anderson told you the reason?

A Yes.

Q Can you tell us now what Mr. Anderson told you the reason that Bache and Company declined to do the public offering was?

A He told me that Chelsea House did not meet the criteria for private placement with Bache of its customers -- period.

Q Did Mr. Oppenheim ever tell you anything to the contrary?

A No.

Q Did Mr. Steinberg ever tell you anything to the contrary?

A No.

Q Let us get back to January of 1970. You were asked about the public offering prospects of this company. In January of 1970, Mr. Jackson, what efforts, if any, did you undertake on behalf of Chelsea House to assist them as an underwriter -- to assist them in securing an underwriter for their public offering?

A Well, probably nothing in January, but following the failure of the Bache discussion I reintroduced or attempted to reintroduce Chelsea House to my friend Jim Rafferty in E. L. Aarons.

Q And did E. L. Aarons or Mr. Aarons or someone representing E. L. Aarons visit with Chelsea House?

A It is my understanding.

Q And were you present at any of those meetings?

A I believe I was at some point.

Q Do you recall when that was?

A Well, that may have been sometime in February, early March 1970.

Q Do you recall what was said at that meeting?

A Well, E. L. Aarons apparently liked the company, so they were unwilling to be involved with an underwriting of the same side as Herzfeld and Stern, whereas Herzfeld and Stern was considering 200,000 shares, E. L. Aarons was only willing to participate to the extent of 100,000 shares.

Q Do you recall the price?

4-2 A Well, I think the price was around $7 but there were a couple of other conditions, whereas Herzfeld and Stern's deal was a firm commitment --

Q And what is "a firm commitment"?

A That meant if Herzfeld and Stern was unsuccessful in selling the issue to the public it would be obligated to buy shares, or at least to pay Chelsea House the full amount as if all the shares had been sold.

Q And what was Aarons' deal?

A Well, Aarons' deal said they would only undertake a best efforts -- that meant if they sold the stock to the

public they sold it. If they didn't sell it and the company did not get any money, that was it. I believe they also had a wrinkle called best efforts 55 percent or more, which meant that if they did not sell at least 50,000 shares then the entire offering would be deemed aborted. If they sold 50,000 shares then the company would be deemed to have an underwriting in some technical SEC sense.

There was one other further wrinkle, and that was even more onerous, E. L. Aarons said that in view of the then market conditions, which were relatively poor for a new company public offering, it required that Chelsea House management supply the names of the potential purchasers.

Q So that the deal with E. L. Aarons was that Chelsea had to sell its own stock?

A In effect it was a self-underwriting with E. L. Aarons name on the cover.

Q Did you have any discussions with any member of management concerning the requirement?

A Well, I had a discussion with Mr. Steinberg about the ability of Chelsea House management to locate enough people who would be interested -- who might be interested in the company. This was complicated by the fact that at this particular time there was no registration statement in effect.

Q Well, how did that occur?

A Well, that occurred because in January -- around January 29 -- a new registration statement had to be filed, that is, a response to the SEC letter of comment, or the financials which were included in the old registration statement would be, as they say, stale.

Apparently Steinberg decided that there was nothing in the immediate offing to warrant the expense of bringing the registration statement up to date so he let it lapse, and that was the end of it. So there not being a registration statement on file, that is, one being considered by the SEC it was illegal for Chelsea House to solicit, if you will, potential purchasers, so that they would have to be in a position of guessing who it was who would buy the stock without telling them that the company was contemplating a public offering -- a terribly difficult position to be in, making it virtually impossible that the company would ever succeed in undertaking this kind of offer.

Q Well, did Mr. Steinberg feel that he or the other members of management could produce the necessary purchasers?

A Well, as he said yesterday, he was not sanguine about the possibility of ever putting this thing together, but he elected to try -- try to get up the main floor of the people who might be potential purchasers of the issue in the event that the company did get up a registration statement

and it was accepted and made effective by the SEC, and so on and so forth.

Q Let me ask you this question, Mr. Jackson, did you express your opinion to Mr. Steinberg about this Aarons situation?

A Well, after his indication to me of what the likely results of his efforts would be I advised him against preparing a new registration statement because I did not believe that the very remote possibility of his ever being able to meet the Aarons terms warranted the expenditures necessary to even get up a draft of a prospectus -- that is, a draft registration statement.

Q Nonetheless -- by the way, was a draft registration statement ever prepared in connection with a possible Aarons underwriting?

A No, it was not. Nothing was ever done.

Q Now nonetheless, did there come a time when Mr. Steinberg did in fact execute a letter of intent on behalf of Chelsea House with Aarons?

A Yes. I believe eventually a letter came from E.I. Aarons, their offer was still on the table to do the deal if Steinberg found the purchasers. Steinberg queried whether it would be worth his while to sign the letter, that is, to be involved and have himself kind of committed with their

letter of intent, and he finally decided that it would be better to have a letter of intent, of his so-called iron in the fire, in the event that at sometime down the road the climate, which by that time in May was zero-the climate turned around so that the market for new issues of public -- that is, new -- I am sorry, public issues of new companies might be received.

Q Now either prior to or subsequent to the letter of in intent did your firm undertake to prepare a new registration statement?

A No.

Q To your knowledge was any other firm retained to do so?

A No.

Q I believe that there was some inquiry this morning about Price Waterhouse being engaged to prepare a new six month statement for the period ending April 30, 1970.

In the light of what you have told me about Steinberg's feeling that no public offering could be pursued and your feeling that the company had no chance to do so, why was Price Waterhouse asked to go ahead with the six month statement?

A Well, early on in January of 1970, of course the company was talking to Bache and it was understood that the

company would make every effort to keep its report on a more current basis than annually.

Q Did you give him any reasons why he should do so?

A Well, I told Mr. Steinberg that it was my experience that good business practice required preparing financial statements other than once a year -- they just weren't good enough, and after the Bache deal fell out of bed I persuaded Steinberg that it was a good course to follow to try to keep books more currently than they had been doing.

Q And you will recall that this morning Mr. Fleming asked you about the March 13 meeting with Mr. Oppenheim?

A Yes.

Q Did Mr. Oppenheim ever tell you anything that was inconsistent with the information you had received from Steinberg about the company?

A Never.

4-3 Q Now with respect to Mr. Oppenheim, what was your opinion of Mr. Oppenheim?

A Notwithstanding what he said when he was on the stand, I always had a very high regard for Jack. I thought he was a very bright fellow. I thought -- it was my understanding that he was a substantial contributor to the work product and the success, as I understood it, of Chelsea House. It was not until he came to me complaining that I learned for

the first time that he had not had that opportunity.

Q What was your relationship -- did you ever have any disputes with Mr. Oppenheim?

A I considered my relationship very cordial; otherwise I would have been surprised that he came to see me to help him.

Q Well did he ever put it to you, as he testified, about the stock you received from Chelsea? Did you ever have a confrontation or dispute with him?

A Not only that, we never had a discussion about it, much less a confrontation or argument.

Q I am talking about that stock, were you asked or told by anyone to give it back, those 12,500 shares?

A Never.

THE COURT: Did you owe an obligation as a lawyer to give it back?

THE WITNESS: No, it was not a question of giving the stock back. I understood that as of July I no longer had any right to the stock. We had all the books. We had the stockbook. Mr. Anderson was in charge of the transfer, and, as I said, your Honor, he told me that we did give back the stock, and when I was deposed I couldn't remember giving it back. Of course it wasn't mine any more.

THE COURT: I am not quarreling with that.

THE WITNESS: I just couldn't remember, Judge, when I was deposed. I was not told but nonetheless I was told it was not mine, and I instructed Mr. Anderson to do whatever was necessary, but when I was deposed I could not recall what happened.

THE COURT: My recollection is that -- I do not have a copy ofthe transcript -- that you weren't one of those who was paying any commission on the stock to Poten.

THE WITNESS: That is correct, to Poten.

THE COURT: How did that happen that you did not pay.

THE WITNESS: Well I did not know anything about it, your Honor. I never heard about it.

THE COURT: Is it the reason why because you weren't really purchasing the stock of Mr. Oppenheim, that somebody else had been committed and you joined in with the person who became responsible for the commission? Wasn't that what happened?

MR. GLASS: No, your Honor.

THE WITNESS: No, I don't think that is what happened. What happened in this case, all of the people who made the deal with Mr. Poten apparently agreed to pay a commission. When Mr. Anderson, representing me, went there, he found, as you will see, an agreement prepared for my signature

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which assumed that I would pay Mr. Poten.

THE COURT: But you did not assume the obligation.

THE WITNESS: It had been prepared apparently for my signature. When Mr. Anderson got there, he had not had instructions from me to make any deal with Mr. Poten. He did not understand that. He understood he was supposed to deliver the stock.

THE COURT: You were not dealing with Mr. Poten; you were dealing, so far as I know, with Mr. Steinberg. Now whether you took part of Mr. Steinberg's allotment, or whatever the case may be, Poten had earned his commission already, and if that commission was paid by somebody other than you, I am not convinced that you were a purchaser.

MR. GLASS: Your Honor, the document submitted this morning --

THE COURT: I know there is a document in which he is listed as a purchaser.

MR. GLASS: And he executed the promisory notes to Mr. Oppenheim -- not to Mr. Steinberg. Mr. Steinberg did not guarantee his purchase. Quite to the contrary. The evidence has been that Mr. Norman --

THE COURT: All right, let us go ahead.

MR. GIASS: Talking about Mr. Norman -- if I may have a moment to look in this deposition, your Honor.

THE COURT: Yes.

(Mr. Glass examines.)

BY MR. GLASS:

Q Do you recall that this morning you were asked by Mr. Fleming how you felt about Andy Norman and how you considered Andy Norman, and MR. Fleming, I believe, read from one particular part of your explanation.

Can you now tell the court what your opinion of Mr. Norman was in its entirety in March and April of 1970?

A Well I had a very high regard for Mr. Norman. I thought he was an energetic, capable fellow contributing to Chelsea House, and I believe if you read the deposition -- if I can read it -- you will see that I said just that when I was deposed in this case.

Q As a matter of fact, you said, did you not:"and in addition Andy seemed to me to be a very sophisticated guy, and a very hard worker and a very bright guy" -- is that not correct?

A That is what I said when I was deposed, speaking of him as of March 1970.

MR. GLASS: May I have a moment, your Honor.

(Mr. Glass examines.)

Q Oh, yes; getting to the Oppenheim sale, what did you think in late March of 1970 when Mr. Steinberg told you

that Mr. Oppenheim was selling out, the reason he was selling out?

A I thought based upon my conversation with Jack that the reason he was selling out was because of his inability to come to terms with Harold -- Harold Steinberg, because of this personality conflict, especially in light of the fact that Andy Norman did not call me as I had suggested to Jack that he do.

Q Did you think that the price of $3 a share was unusual in April of 1970?

A Oh, no, not at all, especially even when you considered it in light of the fact that the preceding year Mr. Oppenheim was turning down $6 or $7 a share. At that time, of course, the climate was, relatively speaking, excellent for new issues; all of the money would have gone to the company and none of it would have gone to the individual stockholders.

When Jack was selling all his stock, the market was very poor. It was not likely that anybody would get $3 a share for their stock if the company went public then, and, more importantly, even if the company had gone public, regardless of its price, if Jack had attempted to sell his block of stock on the market he would have been lucky to get one dollar a share.

Q So you did not think it was an unusual price?

A No.

Q It was a good price?

A It seemed reasonable.

Q Now this morning Mr. Fleming quoted from the petition that you submitted in connection with the bankruptcy hearing, with respect to your knowledge of the affairs of Chelsea House, and the ability of your firm to act as counsel in the bankruptcy matter.

Can you tell the Court when and where you received the information concerning these statements with respect to the business affairs of the company?

A Well, the bulk -- we were speaking collectively at that time -- the bulk of the information that the firm received, insofar as Chelsea House matters were concerned, were those derived in connection with the preparation of a prospectus which was filed in 1969.

Thereafter to the extent that legal work involved us with the company we had that information, and of course in connection with the actual filing itself of the petition in bankruptcy in Chapter XI, as I also indicated in the affidavit, representatives of the firms were there on almost a 12-hour day basis, trying to work out these contracts and complex deals so that appropriate schedules and the like could

be prepared for bankruptcy court, but none of the information other than that was available to me, the material garnered in connection with the registration statement and the financial statements prior to March 1970.

MR. GLASS: May I have a moment, sir?

(Mr. Glass confers.)

Q Sir, when you agreed to purchase your shares from Mr. Oppenheim -- and I believe it is your testimony that you did purchase the shares from Mr. Oppenheim; is that not correct?

A It is certainly my understanding. I certainly paid him the money.

Q Did you have any reason to believe --

A And I might say he is the one who is countersuing me on the money -- nobody else.

Q Did you have any reason to believe, sir, that Chelsea House Communications Inc. was going to make a public offering of the securities in the foreseeable future?

A No, absolutely not.

Q Did you buy this stock in anticipation of any public offering of shares of Chelsea House in the foreseeable future?

A Absolutely not.

Q Did you have any reason to believe that within the

foreseeable future Chelsea House would have a public offering in light of the market conditions as they then existed?

A None whatsoever.

MR. GLASS: I have no further questions. Thank you.

RECROSS-EXAMINATION

BY MR. FLEMING:

Q Mr. Jackson, am I correct that one of the material facts which you claim Mr. Oppenheim failed to disclose to you was the fact set forth in his memorandum, that the company's net worth was less than $100,000?

A Is that my present -- is your question, is that my present claim?

Q Is that one of your claims, yes.

A Well, I don't -- I am not really sure, Mr. Fleming, whether that is really one of my present claims or not. I don't really think so.

Q Well, Mr. Jackson --

A I think I could have found that out for myself.

Q Well, Mr. Jackson, you were questioned under oath by Mr. Sparer in your deposition. Were you asked this question and did you give this answer, on page 117, line 9:

"Q What other material facts were not disclosed to you?

"A He didn't tell me the net worth was under $100,000."

Were you asked that question and did you give that answer?

A Probably did.

Q And was that not in response to questions by Mr. Sparer as to what material facts you claimed Mr. Oppenheim withheld from you?

MR. GLASS: On March 13. So says the deposition.

Q Was that not in response to a line of questions by Mr. Sparer in which he asked you to state those facts which in your opinion were material and which Mr. Oppenheim had not disclosed to you?

A Mr. Oppenheim did not disclose to me that the net worth of the company was less than $100,000 -- that is certainly true.

Q And your testimony in the deposition was that that was one of the material facts which was not disclosed upon which your claim rested, isn't that correct?

A That I said was one of many material facts.

Q And as a matter of fact the very financial statement which you testified to just a moment ago, which was in your possession, states flatly that the net worth of the company is under 100,000, doesn't it?

A It certainly does.

Q I just want to understand that testimony. So I understand it to be that in 1970 you advised -- you questioned Harold Steinberg as to whether Chelsea House could locate enough people who would be interested in buying the company stock at $7 a share, as suggested by E.L. Aarons? Is that your testimony?

A I don't think I said that, Mr. Fleming.

Q All right.

A I discussed with --

Q That was not your testimony?

A I don't believe so. I don't believe I said it exactly as you said it.

Q And, finally, you testified that the reason you believe that Mr. Oppenheim was selling his stock was because of a personality conflict with Steinberg, is that correct?

A That is what I thought then.

Q All right, and that was despite your testimony that Oppenheim told you on March 13 that the economic future of this company was rosy, in words or substance?

A Yes, of course.

Q You agree, do you not, that there is a difference between resignation as an officer and director and divestment of a stock interest which you think has value?

A The two are not necessarily related.

MR. FLEMING: Thank you. I have nothing further.

REDIRECT EXAMINATION

BY MR. GLASS:

Q Despite the fact that the October 31, 1970 financial statement showed a net worth of $85,000, you did not know what the net worth was on March 13, did you?

A No, sir.

Q And you were not aware of the daily disasters that were described in the Oppenheim memorandum, Plaintiff's Exhibit 1, were you?

A No.

Q And Mr. Oppenheim never told you about those other disasters that he described in some detail in his memo that you reviewed earlier, is that correct?

A That is correct.

MR. GLASS: That is all.

THE COURT: And you were buying the stock on that basis?

THE WITNESS: I bought the stock two weeks or three weeks later.

THE COURT: Are you through with Mr. Jackson?

MR. GLASS: Yes.

(Witness excused.)

MR. GLASS: The plaintiff calls Mae Kessler, your Honor.

For the record today, I would like to say that we have the books of Chelsea House in the courtroom.

M A E K E S S L E R, called by the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GLASS:

Q Mrs. Kessler, by whom are you employed?

A Chelsea House Publishers.

Q And in what capacity?

A Bookkeeper.

Q And is that the same as Chelsea House Communicati... Mr. Steinberg's outfit?

A That is right.

Q When did you start working for Chelsea House?

A July 1968.

Q And in what capacity?

A Bookkeeper.

Q And were you the bookkeeper during 1969 and the first quarter through April 10 of 1970?

A Yes, I was.

Q And what did you do as a bookkeeper in that perio... Did you maintain certain books and records?

A I maintained all the books of original entry, which is the cash receipts book, the cash disbursements book, the purchase book and the sales book.

There were subsidiary ledgers which were an accounts receivable ledger and an accounts payable ledger.

Q And are those the books that we have in the court-room today (indicating)?

A They are.

Q And in 1969 and in 1970 did you prepare any interim financial statements for Chelsea House?

A I did not.

Q Did you prepare any financial reports for management in 1969 or 1970?

A I did not.

Q Were you ever asked to supply financial information to the board of directors of Chelsea House in 1969 and 1970?

A No, I was not.

Q Am I correct in stating that the fiscal year of Chelsea House endson October 31?

A Yes, it does.

Q And did the company publish financial statements for the period ending October 31, 1968 in connection with its preparation of a registration statement, if you recall?

A I really don't recall.

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Q Who were the auditors?

A What period?

Q Starting in June of 1969?

A Price Waterhouse.

Q And did they prepare financial statements for the company?

A They did.

Q I show you what has been marked in evidence as Defendant's Exhibit C, which is a prospectus of Chelsea House, and I direct your attention to page 19 and thereafter (handing).

Was this the financial statement of Chelsea House that was audited by Price Waterhouse, if you recall?

(Witness examines.)

Q Do you have that among your books and records?

A I don't recall. May I look.

Q Surely.

A (After examining) I never -- I really don't recall.

Q Okay. So if someone asked you in 1969 if Chelsea House had a balance sheet and a P and L statement, you, as the bookkeeper, really had no knowledge, did you, at that period?

A Which period again?

Q In June of 1969, or July?

A I knew there was a financial statement but I didn't

have it -- okay?

Q And thereafter did Price Waterhouse work on a financial statement for the fiscal year ending October 31, 1969?

A They did.

Q That one you knew about.

A Yes.

Q And how long did it take them to certify the 1969 figures, if you recall?

A About three or four months.

Q So that that statement was published in January of 1970?

A Yes.

Q Were the books of Chelsea House that you described kept on a cash basis or accrual basis?

A I would say a modified accrual. Shall I explain that.

Q Yes, please do.

A To the best of my recollection, bills that were approved and presented to me that pertained directly to books or films or The History Machine was recorded.

Other bills, like rent, telephone, messenger, advertising -- innumerable amounts of bills were not recorded until paid.

Q So am I correct in stating that if I came to Chelsea

House in January, February, March or up to April 10, 1970 and I looked in the books I could not tell what all the accounts payable were because they were never recorded in some instances until they were paid.

A That is right.

Q And isn't it a matter of fact, Mrs. Kessler, that those books indicate that some of the liabilities of the company were not recorded until June -- for the period of the first three months of the year were not recorded until June 1970?

A That is true.

THE COURT: That is not today. This is back in 1969.

MR. GLASS: 1969 and 1970.

Q So that if I asked you, based upon the books and records of Chelsea House to take those books and records and prepare for me a profit and loss statement or a balance sheet, either as of January 31, February 28 or April 10, in or about that time, you could not do it, could you, without doing some more work?

A Correct.

Q Because an examination of those books would not have disclosed all of the items that go to make up a profit and loss statement or a balance sheet?

A True.

Q Now were you required, Mrs. Kessler, as part of your duties, to prepare cash flow statements?

A No.

Q You weren't. Do you know if anybody did?

A I believe it would have been Andy Norman.

Q Did he ever come to you for information to prepare those cash flow statements?

A I can't recall.

Q Did you ever prepare interim profit and loss statements or interim balance sheets?

A During the period --

Q Yes?

A No, I didn't.

Q To your knowledge did anyone in the company do so?

A To my knowledge no one in the company did so.

Q During the period between January1970 and April 10, 1970 what was the situation with creditors at Chelsea House?

A There was a real cash problem, and creditors wanted their money.

Q Did you have any instructions with respect to inquiries concerning the financial affairs of the company?

A No.

Q Well if someone came to you and asked you how the

company was doing in 1969 and 1970 what was your policy? What did you say?

A It would be a self-disciplined kind of an answer. I think it is not professional of me to have given any information to anybody that asked, and I would just give a very evasive kind of an answer. I would say, "Okay."

Q "Things are okay".

A Yes.

Q If Stuart Jackson had come to you in January, February, March or April of 1970 what would you say to Mr. Jackson?

A "Okay".

THE COURT: What would you have said to Mr. Oppenheim

THE WITNESS: "Okay."

THE COURT: What would you have said to Mr. Steinberg

THE WITNESS: Can I point out that there was a distinction between Mr. Steinberg to me and all the other people in management.

Q In other words, am I correct, in terms of supplying financial information that you had considered as the bookkeeper of Chelsea House your only direct obligation to communicate all the facts to Mr. Steinberg?

A Somehow or other that evolved at that time -- that is how it hit me.

THE COURT: But not Mr. Oppenheim or Mr. Jackson?

THE WITNESS: No, not Mr. Oppenheim or Mr. Jackson.

Q Did you consider Mr. Jackson part of the operating team of the company in 1969 and 1970?

MR. FLEMING: I object to that.

THE COURT: I don't think she can say that.

Q Was Mr. Jackson a member of the operating team of Chelsea House in 1969 and 1970?

MR. FLEMING: Objection.

THE COURT: Was there someone that went around with a shirt on called an operating team? What did he do as compared to other people? What access did he have to the books?

MR. GLASS: Fine.

Q What access did Mr. Jackson have to the books and records of the company?

A If Harold Steinberg said "Show Mr. Jackson the books" I would have shown Mr. Jackson the books. Mr. Jackson by himself would not have seen the books.

Q In 1969 and 1970 were you aware of the financial arrangements between Random House and Chelsea?

A I was not.

Q When did you become aware of those arrangements?

A July 2nd, 1970.

Q Well, didn't you receive reports from Random House?

A I received reports but when you say "arrangements", I think it encompasses much more than I can say what I really knew.

Q You are correct. Did you receive written reports from Random House, which I believe was a distributor of Chelsea?

A I did.

Q And were they on a quarterly basis?

A They were.

Q What was Random House in relation to Chelsea? Was it a distributor?

A They were a distributor.

Q Were they the principal distributor?

A They were.

Q So that for the first quarter of 1970, January, February and March, you would not know what the Random House sales were or in fact inferentially what the Chelsea House sales were until you had gotten the report from Random House; is that not true?

A That is correct.

Q Now do you recall when you received the report of Random House sales for January, February and March of 1970 from Random House?

A On the Random House work sheets there is a date written by Random House -- it seems to be a memo kind of date written by their auditors.

Q And what is it?

A May 22.

Q And it was on the report when you received it?

4-6 A I don't know when I received it. That is when they were working on it. It would have to be after May 22. It might be the day they mailed it -- I don't know.

Q But there is no question in your mind that until May you had no idea, at least from the Random House reports, what sales Random House had made for the first three months in 1970 for Chelsea House?

A I did not know.

Q And the financial books and records of the company, if Mr. Jackson or Mr. Oppenheim or anyone else had looked at them, would not have disclosed it, is that correct?

A That is correct.

Q And is it also a fact, is it not, that Random House was the largest distributor and accounted for the greatest part of the Chelsea House book sales?

A That is true.

Q So that at least in that area the books would not have disclosed sales on any particular day within the three

month period if I came there to look at them?

A That is correct.

THE COURT: I think we will recess until two o'clock.

THE CLERK: Court stands in recess until two o'clock.

(Luncheon Recess.)

you believed the company was proceeding toward bank-

AFTERNOON SESSION

2.00 P.M.

MAE KESSLER, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. GLASS:

Q Mrs. Kessler, was Jack Oppenheim an authorized signature on the checking accounts at Chelsea House?

A I believe he was.

Q Did he in fact sign checks during the period that he was an authorized signature?

A Yes.

Q How about Mr. Jackson, was he an authorized signature?

A No.

Q At any time?

A No.

Q I believe you testified that, to the best of your knowledge, the Random House report of sales did not arrive at Chelsea House until some time in May of 1970 for the first quarter, January, February and March?

A That is correct.

Q Can you tell us whether this report, namely, the report received in May for the first quarter, included the returns on the Christmas list for 1969?

A I really can't say from the top of my head. I assume they did.

Q To your knowledge did members of management have any advance information concerning the Random House returns for Random House sales prior to the receipt of the official report in May?

A Not to my knowledge.

Q Did they have telephone calls to your knowledge between them?

A Just as an aside may I interject an office manager was present at that time in Chelsea. I had very little contact with management as such, so that I was never in Harold's office or overhear these kind of things you are referring to.

Q In identifying the books and records of Chelsea House that were maintained in 1969 and 1970, I note that you did not mention an inventory book or inventory cards.

Did you maintain up to date inventory records in 1969 and 1970?

A I did not.

MR. GLASS: I have no further questions.

CROSS EXAMINATION

BY MR. FLEMING:

Q Mrs. Kessler, my name is Peter Fleming and I

represent Mr. Oppenheim in this case.

You testified that you kept accounts payable ledgers in part on an accrual basis, is that correct?

A Pardon me, in part?

Q In part, on an accrual basis.

A Yes.

Q And with regard to certain other bills, those bills were not posted to this accounts payable ledger but were kept until paid?

A That is correct.

Q Am I correct that you did not destroy any bills prior to payment?

A Never.

Q So there was available to anyone who could see it the accounts payable ledger and all payables posted in this ledger plus the bills which had not been posted, isn't that right?

A Yes. But there is one omission. Certain department heads frequently held bills until vendorswould ask about them and then I would scurry around, and that would be a third possible place bills could be.

Q But those would all be at Chelsea House?

A Right.

Q And Chelsea House nor the department heads were

not in the business of destroying bills?

A That is correct.

THE COURT: I must say that was quite a business they were running.

Q Anyone who came in and looked around could see that this was basically the kind of way Chelsea House was operated, on a fairly informa l basis, is that correct?

A That is correct.

T2 Q Now am I correct that if Mr. Steinberg gave permission you would allow anyone to whom he gave permission to see the accounts payable ledger and the unpaid bills or anything else that Mr. Steinberg told you to show him?

A That is right.

Q And without that permission you would not?

A I believe I would not.

Q All right. And that applied equally, I think you testified, to Mr. Jackson and to Mr. Oppenheim?

A Yes.

Q By the way, we reviewed the accounts payable ledger, one of those books shortly before lunch, do you recall?

A Yes.

Q And am I correct that in June, 1970, there remained unpaid bills to Royal, Koegel and Rogers of some $5000?

A Correct.

Q And there was an entry in there of changing that to $25,000, do you recall that?

A Yes.

Q How did that change to $25,000 come about, to your recollection?

A On July 2 when we went into Chapter XI, I was

told to gather all bills on the premises and was told to -- then the typist typed them up, and as the record there says, as per Royal, Koegel's request we are entering our liability to them as $25,000 and not as $5000-plus on the books.

Q The $5000 had been bills received from Royal, Koegel and not paid?

A Correct.

Q And then pursuant to this letter the amount was raised to $25,000?

A I don't know that it was a letter.

Q Well, whatever it was -- as per the instructions?

A Yes.

MR. FLEMING: Thank you, Mrs. Kessler.

THE WITNESS: Am I finished?

MR. GLASS: One moment.

REDIRECT EXAMINATION

BY MR. GLASS:

Q Mrs. Kessler, notwithstanding your testimony that all the bills were some place in the Chelsea House offices -- they occupied several floors, did they not?

A Two.

Q Two floors -- is it still not a fact that it took Price Wsterhouse from October through January 27 to comple e

their audit of the Chelsea House books for the fiscal year ending October 31, 1969?

A It took them that amount of time, yes.

MR. GLASS: Thank you.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Do you have another witness?

MR. GLASS: With the Court's permission, I would like to recall for several brief questions my first witness, Mr. Oppenheim.

THE COURT: All right.

J A C K O P P E N H E I M, Resumed, having been previously sworn, testified further as follows:

THE CLERK: You are still under oath, Mr. Oppenheim.

DIRECT EXAMINATION CONTINUED

BY MR. GLASS:

Q Mr. Oppenheim, I believe you testified in response to my questions on direct examination that you settled a $9000 gambling debt to Leon Friedman by paying him some $2000 and by waiving your claim for payment of the shares that you sold him on April 10, 1970, some $2200?

A I am not sure of the exact amount that I paid

him, but it was either 2000 or 3000, something in that range.

MR. FLEMING: My objection is based on relevance.

THE COURT: What is the relevance?

MR. GLASS: The relevancy of this, your Honor, is that on March 15 this witness came to Mr. Jackson and told him about his grievances and pointed out what Mr. Jackson testified to as a positive picture about the company, not inconsistent with what he had heard from Mr.Steinberg.

The testimony also shows, at least by the 1st of April, at least five days before the sale, that Mr. Oppenheim knew that Mr. Jackson had not received a copy of the memorandum and so testified.

My offer of proof --

MR. FLEMING: I am sorry, Mr. Oppenheim testified that he knew Mr. Jackson had not received a copy of the memo?

MR. GLASS: Yes.

Q Isn't that the case, Mr. Oppenheim?

A No, it is not.

Q Did you not testify to that? To your knowledge had Mr. Jackson --

A To my knowledge he didn't, but I had no dealings with Mr. Jackson. It has always been somewhat of a surprise

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to me, considering the wide dissemination of the document that it never filtered to Mr. Jackson, but I simply cannot prove it.

Q But you have no knowledge that he did receive it --

A No, I have no knowledge.

Q And there is no question in your mind that you did not give it to him?

A No, I didn't give it to him.

MR. GLASS: All right. I intend to prove, your Honor, that the motive for Mr. Oppenheim's failure to go back and correct the record when he knew that Mr. Jackson was a purchaser of this stock --

THE COURT: What do you mean "correct the record"?

MR. GLASS: The record that he made with Mr. Jackson in telling him that this company had very good prospects, and except for his disagreement with Mr. Steinberg he told him the company had a great future, which is a duty imposed upon him to any purchaser of stock, in my humble judgment.

THE COURT: How is this proper at this time? I don't know.

MR. GLASS: Well, facts have come to my attention,

your Honor, which I was not aware of --

THE COURT: Not available to you?

MR. GLASS: No, sir, they were not -- that in addition to this $9000 gambling debt Mr. Oppenheim was deeply indebted in other ways, and he had to sell his stock because he had to satisfy other obligations, and that was his motive for not telling Mr. Jackson the truth about the company.

THE COURT: All right, go ahead, I will accept it.

MR. FLEMING: I object to that.

THE COURT: Over your objection.

MR. GLASS: This will only take one or two minutes, your Honor.

BY MR. GLASS:

Q Mr. Oppenheim, is it not a fact that at the time you owed MR. Friedman $9000 for a gambling debt you were also indebted to other individuals for gambling obligations?

A I had --

Q Yes or no, please.

A Well, gambling -- I owed relatively minor amounts to several bookmakers but I had a running account with --

Q How much did you owe to bookmakers in March and April of 1970?

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A At this time my total indebtedness to everyone, including Leon Friedman, the 9000 -- who was a good friend of mine and would carry it indefinitely,considering the nature --

Q How much did you owe?

A Around $30,000.

Q 30,000?

A I thought my 146,000 shares of Chelsea House stock did not put me anywhere near the poorhouse at that time, and I had no feeling that I had to sell.

Q Now let me ask you this question, isn't it a fact that you knew that Mr. Norman and Mr. Steinberg were making rosy predictions about the company and they believed in the future of the company? Is that not a fact?

A Certainly they believed in the future of the company.

Q And isn't it a fact that you knew it?

A That they believed it?

Q Yes.

A Yes.

Q And isn't it also a fact, Mr. Oppenheim, that you believed quite to the contrary, based upon the facts and your knowledge, you felt that the company was going down the drain? Isn't that a fact -- in March and April of

1970?

A If you must know, when you are the only person who is pointing out that there were problems and everyone else is shrieking that everything is rosy, it is very hard to believe your own sanity.

Now the thing went bankrupt several months after, and everybody says I knew it would. I did not know it would. I did not even know that I made a good deal when I sold it at $3 per share. When it went bankrupt three months later I thought I made a very good deal. At the time I made it I thought, "Gee, these guys may have something. They may go public. I may be the laughing stock of Chelsea House, the guy who got out before it went public."

> I did not know it was going to go bad. I took a dimmer view, and I wasn't interested in remaining in the company in that situation, and when they offered to buy me out I thought, "Okay, that is as far as I can go with the company." I had done everything in my power to try to strighten out the company and nobody would listen.

Q Sir --

A Including Mr. Jackson, because I never told Mr. Jackson that the prospects were rosy--quite to the contrary. I told him exactly the opposite.

Q Now, Mr. Oppenheim, you testified just now that

you did not know that the company was going bankrupt?

A That is correct.

Q But isn't it correct --

MR. FLEMING: If I may interrupt, Mr. Glass, Mr. Glass made a representation to the Court that he had new evidence which he wanted to bring to the Court's attention.

THE COURT: You can argue that.

MR. FLEMING: I object to it.

MR. GLASS: Very good, I will finish.

THE COURT: I sustain the objection. Go to the issue that you said you were going to go to. This is not the time to devote to argument.

T3 Q Mr. Oppenheim, you just testified that you including your gambling debts to Mr. Friedman of $9000, you owed a total of $30,000 in gambling debts. Is it not the fact that your main assets were your shares in Chelsea House?

A This was my principal asset. I have other assets that --

Q Will you answer my question?

THE COURT: He said yes.

A Yes.

Q Let us do what the Court wants us to do and finish.

A Yes.

Q Is it not a fact that the only way you could pay off the bookmakers to keep them from hounding you was to sell the Chelsea House stock as quickly as you could, and that is why you were trying to force the people to buy ?

A No. As a matter of fact, I have many other sources of resources I have often utilized for similar amounts. It was not a --

THE COURT: The answer is no?

A No.

Q Is it ot a fact that as you indicated in Plaintiff's Exhibit 1 in evidence, your memorandum, that

you believed the company was proceeding toward bankruptcy and you wanted to get rid of that stock so you could pay the bookmakers off?

MR. FLEMING: Objection.

THE COURT: No, I said the circumstances --

MR. FLEMING: Objection.

THE COURT: Sustained. That matter has been gone into.

MR. GLASS: Thank you for indulging me, your Honor. I have no furthur questions.

THE COURT: All right.

(Witness excused.)

MR. GLASS: We rest, your Honor.

MR. FLEMING: Would your Honor like to have motions for a dismissal and judgment on the counterclaim? I don't know how your Honor wishes to handle this.

THE COURT: I thought I would give you an opportunity to submit some sort of memorandum.

MR. FLEMING: Would you prefer that I should formally move for a dismissal of plaintiff's case based on a failure to prove the case and just very quickly list the issues?

There is no evidence here of any representations whatsoever by Mr. Oppenheim to Mr. Jackson in connection

with the purchase in question; no scintilla of fraudulent intent in my judgment. It is abundantly clear that Mr. Jackson was a director and whether Mr. Oppenheim did or did not tell him the substance of the contents of the memorandum, and the credibility is for your Honor to determine, putting that aside, Mr. Jackson was a director and certainly had equal and full access to any material information.

I think the information he had, the financial figures running to October 31, 1969, and there is no need to go through that examination, was just yesterday and today, that this was a company that could not pay its debts.

In addition, your Honor, there seems to be no question, as a matter of fact based on his case, that he purchased through Harold Steinberg at a period of time after the deal was made. He joined that group and these men were his agents and any knowledge they had was imputed to him.

I think also there is an in pari delicto defense here and Mr. Jackson, it was brought out, bought the stock without telling Oppenheim that there was an underwriting with E.L. Aron.

For all those reasons I believe that Mr. Jackson's claim is without merit and should be dismissed and Mr. Oppenheim granted judgment on the counterclaim.

THE COURT: I will reserve decision on it and I will hear the testimony.

MR. FLEMING: Very well, your Honor.

THE COURT: We will take a short recess.

(Recess.)

MR. FLEMING: Mr. Norman, please.

A N D R E W E. N O R M A N, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FLEMING:

Q Mr. Norman, are you presently a shareholder of Chelsea House?

A Yes, I am.

Q Are you an officer?

A Yes, I am.

Q Were you one of the founders?

A No, I was not.

Q When did you first become associated with the company?

A The very end of 1967 and the beginning of 1968.

Q Did you acquire a stock interest in the company?

A I did.

Q As of July, 1969, what percentage of stock did

you own, approximately?

A I believe 22 or 23 per cent.

Q Were you an officer?

A Yes, I was.

Q What was your position?

A Vice-president.

Q Do you know Stuart Jackson?

A Yes.

Q Do you know Jack Oppenheim?

A Yes, I do.

Q Do you know Harold Steinberg?

A Yes.

Q Fred Israel?

A Yes.

Q Mr. Hanson, connected with Chelsea House?

A Yes.

Q Mr. Friedman?

A Yes.

Q Mr. Robert Hector?

A Yes.

Q Mr. Harold Harris?

A Yes.

Q Now, do you recall an occasion when all of Mr. Oppenheim's stock interest, some 146,000 shares, were sold

to a group of purchasers?

A Yes, I do.

Q That transaction closed on April 10, 1970, is that correct?

A I believe so.

Q I want to show you Plaintiff's Exhibit 1 in evidence. I ask you to look at that for a moment.

A Yes, sir.

T4

Q I want to ask you, did you see that memorandum prior to your participation in the purchase of Jack Oppenheim's stock?

A I saw a memorandum substantially -- I don't know whether it is exactly the same but substantially.

Q But the so-called Jack Oppenheim memorandum you saw.

A Yes.

Q Did you discuss it with Mr. Harold Harris?

A Yes.

Q Did you discuss it with Mr. Harold Steinberg?

A Briefly.

Q Did you discuss it with Mr.Fred Israel?

A Yes.

Q Did you discuss it with Mr. Hansen?

A Yes.

Q Do you recall whether you discussed it with Mr. Hector?

A Yes, I believe I did.

Q Am I correct, Mr. Norman, that as a matter of fact there were contained in that memorandum -- the memorandum was comprised essentially of specific complaints of Mr. Oppenheim, which had been discussed once or several times prior to your receipt of that memorandum, in various

forms?

A No; some yes; some were new.

Q Some yes, some were new?

A Some were brand new -- I never heard of them before.

Q But there were general discussions of Mr. Oppenheim's complaints even prior to his reducing them to writing, at least in some part?

A Certain of them.

Q Yes. Now I have just one other question. You were a purchaser, a participant in the purchase of Mr. Oppenheim's stock, weren't you?

A Yes, I was.

Q And that was after reading the memorandum?

A Yes.

Q How many shares did you buy, do you recall? I think it is a matter of record.

A Yes, but I don't recall the number.

THE COURT: You eventually bought 59,292 shares. I am reading now from Paragraph B(6) of the pre-trial memorandum on the agreed facts. This was the original agreement under which you had subscribed or agreed to purchase 67,454 shares. However, according to my figures, the difference between that and the 59,292 shares which

you subsequently purchased is made up of 5,462 shares which went to William Lunenfeld, Mary Lunenfeld and Anita London.

Q Does that accord essentially with your recollection?

A I wouldn't dispute that. It sounds right.

THE COURT: The number of shares that went to those three individuals, 5462 shares -- and none of the other participants changed or gave up any of their shares between April 7th and April 10th.

Q Does the number, 59,000 and some-odd shares, accord with your recollection of what you finally purchased?

A I think so.

Q And am I correct you recall that originally you permitted to purchase somewhat more shares than that, and the amount was reduced to the 59,000-share figure?

A Yes.

MR. FLEMING: I had one other question, your Honor, but I cannot find it, I am sorry.

THE COURT: Mr. Norman, originally there was a much smaller group involved in the original purchase, isn't that correct?

THE WITNESS: Well, your Honor --

THE COURT: Three or four?

THE WITNESS: There was a person who was an employee of the firm named William Poten --

THE COURT: Yes.

THE WITNESS: -- who was putting together the purchasing group -- attempting to put together a group to purchase the entire block, and at some point I expressed willingness to take a substantial portion if he put together a whole group, and there may have been one point at which I agreed to a specific amount, which was that earlier figure that you mentioned -- the 5,462 figure that was spoken of purchased by those three individuals.

THE COURT: And that is what you really gave up.

MR. FLEMING: I have nothing further.

MR. GLASS: May I inquire, your Honor?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. GLASS:

Q Now, who was the seller of the stock?

A Jack Oppenheim.

Q Was Mr. Steinberg selling any stock?

A No.

Q Were you?

A No.

Q Were you committing in any way to Mr. Oppenheim that you would find purchasers for his stock?

A No.

Q To your knowledge was Mr. Steinberg?

A Committing to Mr. Oppenheim?

Q Yes.

A No, I don't believe so.

Q In other words, as you testified, the individuals that Poten was putting together, a group of people who were to buy the stock?

A Yes.

Q And Mr. Oppenheim was the only seller?

A Yes.

Q There were never any agreements in existence, to your knowledge, prior to the April 7th purchase agreement which committed you to buy any number of shares -- before you signed the final purchase agreement you hadno signed agreement with Mr. Oppenheim, did you?

A No.

Q And, to your knowledge,did anyone else?

A Not to my knowledge.

Q Now I believe you testified that you had discussions with Harold Harris about Plaintiff's Exhibit 1, that Oppenheim memorandum. What did you tell Mr. Harris?

A I don't recall. We discussed it in passing.

Q Well, did you discuss it in detail?

A No, I don't believe so.

Q For example, Mr. Norman, did you discuss with Mr. Harris Mr. Oppenheim's statement that Chelsea House was going through a period in which the question of its survival was at stake?

A Well, I discussed that subject with Mr. Harris, although I don't recall necessarily doing so in the context of this memorandum, but the subject was one that Mr. Harris and I discussed at length because it really depended -- the future of Chelsea House depended very much on his ability to sell educational films.

Q He was one of the purchasers, wasnt he?

A Yes, he was.

Q And he bought about $90,000 worth of stock, did he not?

A I believe that is about right.

Q And he came aboard Chelsea House in March, did he not, as a full-time employee, in 1970?

A I believe his employment contract took full effect at the end of March, but he had been working with us for two or three months before that.

Q And he left a position, did he not, with McGraw-

Hill?

A Yes.

Q What position did Mr. Harris have with McGraw-Hill?

A He was in the sales -- educational and reference sales.

Q Did he have a responsible position?

A Yes.

Q And did you satisfy him with respect to the future prospects of Chelsea House before he came aboard and left this position that he had with McGraw-Hill?

A I wasn't really involved in satisfying him.

Q But you bought some stock, did you not?

A Well, I think he satisfied me as to the future of Chelsea House rather than the other way around.

Q Did you ever discuss with him the statement in the Oppenheim memorandum that circumstances could lead the company to bankruptcy and creditors unpaid?

A I don't recall that.

Q Did you discuss with Mr. Harris the statement in Mr. Oppenheim's memorandum that current liabilities exceeded current assets by over a half-million dollars?

A I don't specifically recall that. We did discuss cash flow in anticipation of problems and questions.

Q Did you discuss with Mr. Harris the fact that the publicity department was spending money for advertising on books that had not been published, as set forth in Mr. Oppenheim's memorandum?

A No.

Q You did not?

A I am sure I didn't.

Q And did you discuss with Mr. Harris the fact that most of the departments in the company had been forced to spend an inordinate time deflecting creditors, as set forth in the Oppenheim memorandum?

A I don't believe so.

Q How did the discussion come about with Mr. Harris that you discussed the Oppenheim memorandum?

A To my best recollection he mentioned it to me shortly after receiving it, and asked what kind of problems it raised, but essentially as a document and an event he did not want to go into it, and he complained in fact to me of Mr. Oppenheim as causing trouble and wasting his, Mr. Harris's, time. He felt, in trying to discuss aspects of the company, that Mr. Harris wasn't interested in -- he was in charge of sales -- and in attacking Mr. Steinberg whom Mr. Harris had known for some time and had substantial confidence in.

Q Well, let me ask you this question. I believe you indicated that although Mr. Harris's contract did not officially start until the end of March, he came aboard earlier than that?

A Yes.

Q What did you tell Mr. Harris about creditor problems in Chelsea House, and the state of financial affairs before he agreed to leave his position with McGraw-Hill?

MR. FLEMING: I object. I do not see the relevance of this line of questions.

MR. GLASS: Well, it shows the availability of information from inside management, which is one of the elements in this case, and I think, as we had Mr. Steinberg on the stand and he indicated that he was telling the public and what he told Mr. Jackson, that we are entitled to know what another executive officer, a member of management, was telling people about the company at this time, when, according to the Oppenheim memorandum, there was a crisis.

THE COURT: What did he tell to Mr. Jackson?

MR. GLASS: No, what information was generally available by a person exercising reasonable care.

THE COURT: Well, we have already gone into that. Do you want to ask him some more questions?

Q What did you tell Mr. Harris before he came aboard about the financial situation of the company?

A Before he came aboard in the sense of agreeing to work and starting to work for Chelsea House, I don't believe I told him anything. I don't believe I had any discussion with him on that subject.

Q In March or April of 1970 was it true that the company was substantially in debt and unable to meet its obligations to creditors?

A We had increasing difficulty.

Q Was it a fact?

A Yes, I guess it was. We thought it was a period that we were going to get through, but it turned out not to be.

Q And was it also not a fact that the current liabilities in March and April of 1970 substantially exceeded current assets?

A Yes.

Q And did that figure approximate half a million dollars?

A I really do not know that. The definition of what was in the list of current on each side, I can't give you an offhand opinion.

MR. GLASS: May we have this document marked for

identification.

xx (Plaintiff's Exhibit 8 marked for identification.)

BY MR. GLASS:

Q I show you Plaintiff's Exhibit 8 for identification Mr. Norman, and ask you if you have ever seen this financial statement before (handing)?

A (After examining) I believe I have.

Q And isn't this an unaudited balance sheet of Chelsea House as at April 30, 1970?

A It so declares.

Q And this is the one that was sent out to all creditors in connection with the bankruptcy, was it not -- if you know?

A I believe so -- sent out in July.

Q May I direct your attention to the caption "Total Current Assets, $1,255,555," and to the caption "Total Current Liabilities" of $1,622,973. So that it would appear that at least on April 30th, according to a financial statement published by Chelsea House, the current liabilities of the company exceeded the current assets by approximately $350,000, did they not?

A Well, that is possible, but these are accounting terms. One of the three large items under "Current

Liabilities" is "Advances" of $498,827, which rounded out to some $500,000. Now not all -- by no means all of those were current, in the sense of coming due. The bulk of that were advances from Random House against books to be published by Chelsea House in the near future and distributed by Random House, and those advances were based on Random House's estimates of prospective sales and the net returns to Chelsea House from those sales.

T5 Q Well, at least on April 30 your experience had not showed you that these advances were repaid, so you reported them, did you not?

A I assume this is what the accountant found outstanding.

Q So that am I correct in stating that according to the financial statements submitted to creditors your current assets were exceeded by current liabilities by approximately $250,000, is that not correct?

A Yes.

Q Based on that data?

A Yes. That current, I take it means payable within one year?

Q Right. You mentioned those advances. There has been testimony here this morning by Mrs. Kessler that the report of Random House for the period January 1, 1970, through March 31, 1970, was not received officially in written form by the company until May?

A Well, they were required to give the report 45 days after the end of the quarter and it usually came a week after that 45 days.

Q Prior to the receipt of the official report had you or any member of management advance information as to how you were doing with the books that Random House was

distributing for you?

A With certain books.

Q Were those reports favorable or unfavorable?

A They were on the whole that winter very disappointing.

Q What did you do with that information? Did you discuss it with other members of the inside management team?

A With Mr. Steinberg, Mr. Hector, Mr. Oppenheim.

Q Oppenheim was part of those management discussions?

A Yes.

Q Who got this information from Random House, was it you, Steinberg or Mr. Oppenheim? Who called Random House, if you recall?

A Mr. Steinberg had the most frequent contact with the sales department, Random House.

Q Did Oppenheim have any contact with Random House, to your knowledge? Did he call them himself?

A Not to my knowledge.

Q Now, did he participate in these meetints in January and February at which the disappointing results were discussed. I believe you testified that he was at some of those meetings?

A Yes. When you say meetings --

Q Your informal get togethers.

A We worked in a fairly small setting and in a quite informal editorial office and we talked to each other about these things as they came up later in the day.

Q How often?

A Any day; maybe every day.

Q Could it be on a daily basis, sometimes or two or three times a week?

A Yes.

Q Was Oppenheim included in these discussions?

A When he was there.

Q He was never barred?

A No, I don't believe so.

Q At these meetings were the day-to-day problems of the company discussed?

A Yes.

Q By the way, did you talk to Random House yourself to get some of this information?

A I may have, on one or two occasions. I don't know.

Q Now, at those meetings -- you never had any formal board of directors meetings, did you? These were just pick-up meetings at the end of the day?

A Or during the day.

Q Did you discuss in addition to the disappointing experience that you had with the Random House on some of these books, some of the other problems of the company?

A Certainly.

Q Did you ever have any discussions with respect to the creditor problems of the company? That the creditors were bothering you?

A We would discuss creditors.

Q Was Oppenheim ever present at any of the meetings when creditor problems were discussed?

A Some.

Q Did Oppenheim ever voice the opinion at these meetings that he felt that the company was insolvent and might go into bankruptcy?

A No, not that I recall.

Q I take it then that that statement in Plaintiff's Exhibit 1, which is the Oppenheim memorandum, that circumstances could lead the company to bankruptcy and creditors unpaid, was not one of the subjects that Mr. Oppenheim discussed with you before the publication of his March memorandum?

A That is a statement that could be made about any company at any time.

Q Did Oppenheim make it to you about your company,

the one in which you had a substantial investment?

A I think not in those terms.

Q What did he say?

A Concerning what?

Q About insolvency or bankruptcy of Chelsea House, the company was going down the drain?

A Yes, he used to use terms like that.

Q What did he say?

A He had some opinions as to policies and some mistakes he thought we were making and some things he thought we should do, procedures, personnel changes, policy changes, emphases.

Q With Mr. Steinberg, did they get along?

A No.

Q Did Oppenheim get along with you?

A Well, to a degree.

Q Why did you think that Oppenheim was selling his stock at the time he sold it?

MR. FLEMING: I object to this question, your Honor.

THE COURT: I don't see that it makes any difference unless he told him.

Q Did Oppenheim ever tell you the reasons why he was selling his stock?

A Well, he did tell me that he wanted to get out and sell out and be out completely because he felt -- which was true -- that he had not been able to function as part of this small team for several months.

Q Can you tell us how the figure of $3 a share was arrived at in connection with your purchase of part of the Oppenheim stock?

A The figure was quoted to me by Bill Poten.

Q That was a figure transmitted by Poten that didn't originate with you?

A No.

Q To your knowledge did it originate with Steinberg or any other purchasers?

A I don't know.

Q Did you attempt to negotiate this figure downward after it was quoted to you by Mr. Poten?

A I don't recall. My best recollection is that before I made any commitment that a number of other people already made commitments at $3 a share, so essentially I couldn't begin to negotiate it.

Q You were not working with the group? From your point of view yoursale was an individual sale?

A Yes -- a purchase.

Q Sir, you just testified that other people had

already committed themselves to a $. price before you elected to buy some of Mr. Oppenheim's stock.

But for that fact would you have attempted to negotiate the price downward?

A But for that fact I wouldn't have bought any.

Q Would you explain this, please?

A Well, a few weeks earlier, I think in February or early March, Mr. Oppenheim had offered me all of his stock at $2 a share and I had rejected it.

Q In early March?

A Late February or early March, in there.

Q $2 a share?

A I rejected it and not negotiated on the grounds that it would be a little less or whatever.

Q Did he indicate at that time why he wanted to get out at $2 a share?

A Essentially the reasons I stated two or three minutes ago that he wanted out.

Q So that the April ultimate sale was not your first contact with Oppenheim with respect to his desire to sell his shares?

A No.

Q His first contact antedated the preparation of the memorandum?

A Yes -- I think so.

Q In March?

A It may be about the same time, it may be just after. I don't recall the dates.

Q Sir, in your opinion was the relationship of the price that you paid on April 10 of $3 a share and the reasonable value of the shares at that time?

A The value was obviously prospective rather than current assets.

Q Based upon the company as it stood then, was it your opinion that $3 was the right price or did you have a different number in mind?

A I felt it was high.

Q How high? Your best judgment.

A That is hard. It would have been speculation at that time.

Q You had rejected $2. Did you think that the price was worth more in April than $2 that you rejected in February?

A I can't answer that. I don't know how I can answer that.

Q What motivated you to buy the stock when you learned that other people had already committed themselves at the $3 number?

A Well, the combination of our new sales manager, Harold Harris's sales projections and the report of how his sales program was developing in terms of sales representatives around the country and their response to the product and their estimates and his estimates as to sales;combined with his decision to buy stock on top of the fact that we had already given him a very attractive contract, just gone into effect, an employment contract with stock and cash overrides and so on, was a very strong influence on me.

He had been in educational sales for quite a number of years with a top company and if he believed that strongly in his projections that he would back it up with a purchase at $3 a share, I was impressed.

Q Based on this you went forward and committed yourself for over $150,000 in terms of your purchase from Oppenheim?

A That is unfortunately true.

Q Would it be fair to say that you were optimistic when you invested this money about the future prospects of the company?

A I must have been.

Q Otherwise you wouldn't have made the investment.

Before you made this additional investment in

this company, I think you indicated that you were already a stockholder?

A Yes.

Q What was your investment in the company at that time by virtue of your prior stock purchases?

A In number of shares?

Q No, number of dollars, approximately.

A Over $300,000.

Q In addition to that, you had loaned the company money as well, had you not? Did you hold a debenture?

A For $110.

Q That brought it to $400,000. In addition to that you had guaranteed certain of the obligations of the company, had you not?

A Four of us had co-guaranteed, yes.

Q Who were they?

A Mr. Oppenheim, Mr. Hector, Mr. Steinberg and myself.

Q What was the amount of those guarantees?

A It went as high as about $275,000 --

Q How much?

A $275,000. I think this was the peak some time during that spring of 1970.

Q We are up to about --

A From the Chemical Bank.

Q Either through guarantees, loans or stock investment, you had almost $700,000 in the company?

A Exposed. At least, yes.

Q These guarantees were cross-guarantees, were they not?

A Yes -- well, I don't know, they were co, jointly and severally.

MR. GLASS: May I have a moment, your Honor?

(Pause.)

MR. GLASS: I have no further questions, your Honor. Thank you.

REDIRECT EXAMINATION

BY MR. FLEMING:

Q Mr. Norman, do you know when this Plaintiff's Exhibit 8 for identification was prepared?

A No, I don't. It must have been after April 30.

Q Within a month after April 30?

A I would think certainly within five weeks.

Q Was it available to the directors?

A Well, I don't know who -- I believe this was prepared by Price Waterhouse. They were doing that work.

Q Was it available to the directors?

A Well, I don't know who they sent it to.

Q Was it available to directors who wanted to see it?

A It was available to me.

Q Would you have denied access to any director who asked to see it?

A No.

Q Am I correct that the $2 to Mr. Oppenheim offer to sell all of his stock for was a straight cash deal?

A Well, I don't believe we got into those questions. We may have, I don't remember.

Q And $3 was on terms?

A Yes.

Q 22-1/2 per cent payable April and the balance over the next two years?

A Yes.

MR. FLEMING: Thank you very much.

RECROSS EXAMINATION

BY MR. GLASS:

Q With respect to 8 for identification, isn't it a fact, sir, that this balance sheet was sent to the creditors after the company filed in bankruptcy?

A Yes, it was.

Q Isn't it a fact that it was not until June of 1970 that the books were posted up to date at the request

of the Bankruptcy Court so that this notice could be sent out?

A That is possible. I frankly don't remember. It may verywell be the case.

Q But there is no question in your mind, is there, that the April 30 financial statement was prepared after the company went into bankruptcy in connection with the notice?

A I can't testify yes or no on that. I really don't know.

THE COURT: Is that an exhibit?

MR. GLASS: It is for identification. I offer it.

MR. FLEMING: I have no objection.

(Plaintiff's Exhibit 8 received in evidence.)

A It may have been prepared for the bankruptcy file, petitions or reports, whatever. That is very possible.

We did not have regular quarterly reports of that kind from Price Waterhouse previously, I believe.

T6 Q Are you satisfied -- I believe that there has been testimony that the petition in bankruptcy for Chapter XI was filed on July 2 of 1970?

A Yes.

Q In light of that information are you now satisfied that Plaintiff's Exhibit 8 in evidence was not prepared within five weeks of April 30th?

A Well, I don't know. It may not have been. I cannot specifically recall seeing it before July 2nd.

Q What is the basis -- you never saw it before July 2?

A I can't say that I did. If I did see it in early June I wouldn't remember it because we had other problems -- what the technical balance sheet was on April 30th wasn't of much contemporary interest during the crisis we were going through in June.

Q Had you ever looked at the financial books and records of the company?

A Yes.

Q I direct your attention to account No. 4157.88 of your accounts payable ledger, and direct your attention to the fact that it was not until June of 1970 that accounts payable for the months of January, February, March and April were recorded. Does this refresh your recollection as to when that financial statement was prepared (handing)?

A (After examining) No, it doesn't. I can't -- I believe that is a list -- which is it? Is it this name that is crossed out (indicating)?

Q In other words, the books indicate that in June all of these accounts payable were posted. Is it not a fact that in June Mrs. Kessler was requested to post all liabilities of the company so that by the end of June a balance sheet could be struck and sent to creditors? Does that refresh your recollection?

A Well, I know she was doing that at -- around the time we did file and immediately thereafter.

Q That was in June and July, was it not?

A Yes.

Q So does that refresh your recollection with respect to when the April 30th balance sheet, Plaintiff's Exhibit 8 in evidence, was prepared?

A No, it doesn't.

Q Was it prepared before the books were posted?

A Well, that is April 30th --

Q These entries relate to January, February and March.

A Well, I don't know whether these entries, January, February and March, are reflected in that balance sheet or not. I don't know.

Q Mr. Norman, when you and Mr. Oppenheim and Mr. Steinberg were discussing the telephone reports received from Random House, do you recall you testified that you had some advance notice about disappointing sales -- did you communicate those facts to Price Waterhouse before the receipt of the official report from Random House, in May of 1970?

MR. FLEMING: I object.

A No. They would receive that report.

MR. FLEMING: Excuse me?

THE WITNESS: They would receive that report.

A Yes, of course, they -- Price Waterhouse knew what the Random House schedule of reporting was, but the April 30th report would not come in until the third week in May, and since that was a very substantial portion of their business there was no way they could close that April 30th report until after that.

Q Until after May 22nd or whenever the record shows it came in?

A Whenever it shows it came in.

MR. GLASS: Thank you very much.

MR. FLEMING: One last question, if I may, your Honor.

REDIRECT EXAMINATION

BY MR. FLEMING:

Q On these Random House reports am I correct that there was a report by Random House as of December 31, 1969?

A Yes.

Q And Price Waterhouse, of course, would have access to that just as they had access to the later one?

A Yes.

Q And that would reflect sales by Random House up to December 31, 1969?

A Yes.

MR. FLEMING: Thank you.

I have nothing further.

THE COURT: You are excused.

MR. GLASS: May I ask him one last question?

THE COURT: All right.

BY MR. GLASS:

Q With respect to the Christmas list, the Random House report for the fourth quarter, October, November and December, that would not include the returns from the Christmas sales in December until the subsequent period, would they?

A Oh, no, of course. Those book stores start returning in January and February, and sometimes they hold

those books until much later.

THE COURT: I think we have already had that.

MR. GLASS: Thank you very much.

THE COURT: You are excused. Thank you.

(Witness excused.)

MR. FLEMING: Mr. Oppenheim rests, your Honor.

THE COURT: I will reserve decision. I will decide it as soon as possible.

MR. GLASS: Your Honor, we have ordered a transcript of the proceedings, and I wonder if we could impose on the Court for a schedule under which we could file post-trial memoranda with the Court?

THE COURT: Post-trial memoranda with any conclusions of fact and law.

You will get the transcript within the next few days, I imagine.

MR. GLASS: Yes.

THE COURT: You can back your memorandum up with reference to the transcript and the exhibits.

MR. GLASS: That is what we will do.

THE COURT: If there are any further proceedings we will go into that then.

MR. GLASS: Your Honor, may I inquire as to the number of days in which you would expect us to exchange?

THE COURT: I know how busy I am. I do not know how busy you lawyers are, so it is up to you to work it out.

MR. GLASS: May I suggest this, if Mr. Fleming has no objection, 30 days after we receive the transcript to exchange briefs, and 10 additional days to reply to one another.

MR. FLEMING: Your Honor, I do oppose that. I think we can do this in 10 or 15 days.

THE COURT: It seems to me a couple of weeks.

MR. FLEMING: Yes.

THE COURT: If you want to I can hand down an opinion now, but I think in fairness to everybody you should have a chance to make whatever points you wish.

MR. GLASS: Thank you.

MR. FLEMING: Thank you.

(Decision reserved.)

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

STUART A. JACKSON,

Plaintiff,

-vs-

JACK OPPENHEIM,

Defendant.

71 Civ. 1205

BEFORE: HON. CHARLES H. TENNEY, D. J.

September 10, 1974
10:30 a. m. - Room 906

APPEARANCES:

GLASS GREENBERG & IRWIN,
Attorneys for Plaintiff,
BY: LEONARD R. GLASS, ESQ., and
LEONARD S. BARASCH, ESQ.,
Of Counsel.

CURTIS MALLET-PREVOST, COLT & MOSLE, ESQS.,
Attorneys for Defendants
BY: PETER FLEMING, ESQ.,
ALAN SPARER, ESQ., and
DOUGLAS MANSFIELD, ESQ.,
of Counsel.

THE CLERK: The trial, Stuart Jackson against Jack Oppenheim.

Is the plaintiff ready for trial?

MR. GLASS: Plaintiff ready.

THE CLERK: Defendant ready?

MR. FLEMING: Defendant Oppenheim ready.

THE COURT: Unless you want to make an opening statement, I am familiar with the case.

MR. GLASS: Pardon me.

THE COURT: If you gentlemen want to make an opening statement, it is all right with me, and if you want to waive it, all right -- whichever is convenient.

MR. GLASS: Your Honor, with the Court's permission, I would like to make a very brief opening statement.

THE COURT: All right.

MR. GLASS: If it please the Court, the plaintiff Jackson is suing the defendant Jack Oppenheim under the Federal Securities Statutes forrescission in connection with the transaction in which the plaintiff Jackson purchased from Oppenheim approximately 14,000 shares of stock at $3 a share.

It is the plaintiff's position that in making this sale to Mr. Jackson the defendant withheld material facts which in light of the circumstances made the material that Jackson had misleading.

Mr. Oppenheim was a vice president and a director of Chelsea House Communications, Inc. Mr. Jackson was the secretary of this corporation and also a director.

The proof will show that while Oppenheim was an insider and involved in the day-to-day operations of the company, Jackson was an outside director, like his counterpart, Arthur Schlesinger, Jr., and actually put on the board of directors for window dressing in the pursuant of respectability in connection with a proposed public offering.

Proof will also show that in truth and in fact Mr. Jackson had nothing to do, nor was he aware of the intimate day-to-day operations.

Now in a 10-b-5 case, such as this,we are faced with four basic elements:

Number one; intent.

Number two: materiality.

Number three: due care and,

Number four: reliance.

The proof will show that the defendant Oppenheim had the intent to withhold this information, thereby satisfying the requirement of scienta.

The key in this case is a memorandum report which the proof will show Oppenheim prepared and caused to be distributed to certain select members of management several

weeks before the Jackson sale.

The proof will also show that the defendant Oppenheim had a meeting with Jackson several weeks before the Jackson purchase.

The proof will also show that neither in the meeting that he held, that Mr. Oppenheim held with Mr. Jackson several weeks before the sale, nor subsequently and prior to the purchase did he ever disclose the material facts which any reasonable man would judge before making a sale, prior to the sale of this Dr. Jackson.

The proof will also show that Mr. Oppenheim knew that the other members of management, together with him, either consciously or unconsciously had entered into a conspiracy of silence with respect to the actual facts concerning the business and operations of this company, Chelsea House Communications, Inc.

The proof will show that this may have been a subconscious conspiracy; that the other insiders were motivated by a desire to believe only the best as to their company, or motivated by a desire to have Mr. Jackson continue his efforts to obtain for them an underwriter for the public sale of their stock, and therefore self-consciously not wanting him to know what was really going on, because the proof will show that within two months after the sale of his stock, Mr. Oppenheim's

talk to Mr. Jackson, this company filed for Chapter XI.

The proof will also show that at no time did Mr. Oppenheim directly or indirectly communicate to Mr. Jackson the facts contained in his memorandum, or the true facts in addition to that with respect to the business affairs of this company.

Now, your Honor, attempts will be made to impute the knowledge of other insider purchasers with respect to their knowledge of the Oppenheim memorandum, and with respect to their knowledge of the true financial condition of this company, but I respectfully suggest to your Honor -- and the proof will show -- that the preparant is absolutely devoid of any showing that at any time did any other insider communicate these facts to Mr. Jackson, nor could Mr. Jackson in the reasonable exercise of due care have foundout the true facts about this company, because these facts were not contained in any minutes of board of directors' meetings, in any available financial records, but were things which were inherent in the day-to-day operations that an outside director could not reasonably have been expected to find out even in the exercise of due care, and I respectfully suggest to your Honor that when the facts are shown with respect to what was contained in what we now refer to as the Oppenheim report, that the standard of what a reasonable man could have and

should have relied upon in making a purchase of stock, and what Mr. Jackson should have been told by Mr. Oppenheim was withheld, and accordingly Mr. Jackson is entitled to a rescission of his transaction, the return of his downpayment and interest, and complete release from any further obligations.

Thank you very much.

MR. FLEMING: If your Honor please, just very briefly, I will just point out two facts: One is that Mr. Jackson was a director of this company at all material times, and as such --

THE COURT: He did legal work for them too, didn't he?

MR. FLEMING: Pardon me?

THE COURT: He did legal work for them didn't he?

MR. FLEMING: His law firm, now Rogers and Wells, was general counsel to the corporation, but Mr.Jackson was responsible for that -- they were his client.

In addition, both as a lawyer and a director he signed a proposed registration statement which contained financial statements as of April 30, 1969, and as a director he received a copy, or a copy was directed to him of the year-end audited financial statement for October 31, 1969; so that all of that information was clearlyknown to Mr. Jackson or was available to him.

He invested in a company which had flopped, your Honor, according to the financial statements, from a profit of some $30,000 as of April 30, 1969 to a loss of $127,000 as of October 31, 1969 -- a turnaround of approximately $157,000, representing a loss for the last six months, the most relevant six months, of $157,000 in the operations of this company.

Secondly, your Honor, so far as the purchase is concerned, Mr. Oppenheim did not solicit Mr. Jackson's participation. Mr. Oppenheim was approached through an intermediary by other principals in the company -- Mr. Norman and MR. Steinberg, to buy out Mr. Oppenheim at a price of $3 a share on terms, and then without Mr. Oppenheim's knowledge Mr. Jackson was asked by one of the other principals of the corporation whether he would like to participate in what became a group to buy out Mr. Oppenheim.

Mr. Oppenheim did not approach Mr. Jackson and did not request or suggest his participation. He had no conversations with him about that participation. It was done entirely on Mr. Jackson's own hook, and based on whatever conversations he may have had with people other than Mr. Oppenheim. So far as Mr. Oppenheim is concerned he was dealing with a purchasing group headed by other insiders, everyone of which was in fact in a better position than he was to know the true condition of the company. Whether in fact the company was in

a condition of bankruptcy at the time of the sale I think is questionable. Mr. Jackson, in an affidavit submitted in support of a claim for legal fees, services rendered during the bankruptcy, stated -- and we will prove this -- that the reason for the bankruptcy was not the financial condition of the company as of the time of the sale but resulted because of the unfortunate downturn in the market during 1970, making a public offering of shares not possible.

Moreover, the reduction in government spending for educational purposes led to a similar downturn in the primary educational market for their products, so I must say that I see nothing whatsoever to Mr. Jackson's claim, which is a claim of a director and insider against another insider with whom this director never dealt in connection with the purchase and to whom, again, to Mr. Jackson all of the financial information relative to the condition of the company was available and undoubtedly was perused.

THE COURT: All right.

MR. GLASS: Your Honor, the plaintiff calls as its first witness Jack Oppenheim.

J A C K O P P E N H E I M, called as a witness by the plaintiff, sworn.

DIRECT EXAMINATION

BY MR. GLASS:

Q Where do you reside, Mr. Oppenheim?

A 241 Central Park West.

Q And what is your occupation?

A I am director of Project Development, Visual Information Systems.

Q What does Visual Information Systems do?

A It produces and distributes videotapes to the medical market, to business. Now we are investigating going into continuing legal education.

Q Are any of the principals of Visual Information Systems, were they at any time principals in Chelsea House?

A No.

Q How long have you been with Visual?

A Since June 1974.

Q And prior to that time?

A Prior to that time I was for a year an associate at Demov, Morris, Levin and Stein.

Q You are a lawyer?

A I am a lawyer.

Q When were you admitted to practice?

A 1959.

Q Fifteen years?

A That is right.

Q What is your educational background?

A How far back do you want to go?

Q College and law-school.

A University of Wisconsin, BA, 1953; and LLB, Harvard Law, 1958.

Q Now after your graduation from law school did you practice law?

A Yes.

Q For how long?

A I practiced law full time really for about four years -- two years with the Corporation Counsel, from 1963 to 1965 in the Real Estate Tax Division; then from 1965 until 1966 I was with Peter and Hubert Brandt, practically exclusively real estate tax reductions, representing the owners.

Q And this real estate tax reduction practice did you prepare petitions and involve yourself in proceedings in connection with people who own commercial establishments that were trying to get reductions in their real estate taxes?

MR. FLEMING: I object to that. I do not see the relevance.

THE COURT: I don't see why you have to go into all this.

Q Did there come a time when you became associated with Chelsea House?

A Yes.

Q Can you tell us when that was?

A As a working partner I became associated with them in September of 1966.

Prior to that I had put up some money for a partial interest, which became a one-third interest in what was then a partnership in September since 1966.

Q And who were th other partners?

A Harold Steinberg and Robert Hector.

Q And subsequently did the partnership become incorporated?

A Yes, sir.

Q And about when did that take place?

A About a month later.

Q And in what year was that?

A 1966.

Q Did you become an officer of the corporation?

A I became an officer, yes.

Q What office?

A I am not certain -- I think vice president.

Q And did you also become a director?

A Yes, I also became a director.

Q And who were the other officers and directors?

A Well, Steinberg and Hector, and I am not sure if anybody else became a director at that time -- I don't think

so.

Q And after your election in 1966, I believe you said --

A Yes.

Q -- as an officer and a director, did you continue as an officer and director of Chelsea House Communications, Inc.?

A I continued as an officer until March 6th, 1970 when I resigned.

Q Well, did you notwrite a letter in February of 1970 --

A I resigned. I sent a letter of resignation dated February 6, effective March 6, 1970, which was my resignation date.

Q And when did you resign as a director of the company?

A The date of my sale, which was April 10, 1970.

Q Taking you to 1969, Mr. Oppenheim, what were your duties as a vice president of Chelsea House, in that year?

A At what time during that year?

Q Commencing in April when you returned from Europe, I believe --

Well, let me ask you, were you paid a salary?

A Yes, I was paid a salary.

Q What was your salary?

A 25,000.

Q What did you do for it?

A I think at the time in April it was 18,000 and it went up to 25.

Q When did it go up to 25?

A I think it went up probably in October. I am not certain -- perhaps you could tell me -- I am not certain -- I think it was 18 in April and went up to 25 sometime later in that year.

Q Let us go back to Aprilwhen you were earning $18,000 a year.

What were you doing for Chelsea House for that $18,000 a year?

A Well, I was working with Fred Israel on developing a project called The History Machine.

Q And were you doing anything else?

A Yes. I was involved in selection of book projects.

I was editing certain material for the University-At-Large-Program, and I ended in a general supervisory category keeping a look on projects that were on-going to see that they were proceeding.

Q When the company raised your salary to $25,000 a year did you take on any additional responsibilities?

A No.

Q Were you still in that general supervisory position watching projects of the company?

A Yes. We all were in that -- all the top management served that function. It was a very unstructured company.

Q Were you a member of top management?

A Yes, I was.

Q And were you a member of top management until you resigned in February or March of 1970?

A Yes, I was.

Q Who were the other members of top management in 1969, commencing in April, through the date of your resignation?

A Harold and Jeffrey Steinberg, Robert Hector, Andrew Norman, Leon Friedman, and Fred Israel.

Q When did Fred Israel come aboard?

A Late in 1966.

Q You mentioned Harold Steinberg. What did Mr. Steinberg do in the company?

A He was president, and he was -- he resolved all questions basically.

Q How about Jeff Steinberg?

A Well, Jeffrey was Harold's son.

Q In addition to that what did he do in the company?

A Well, he held down a wide listing of titles, such as advertising manager. He was in charge of sales of The History Machine. He was the art director.

He had about 10 different functions. It was, I think, politically motivated and involved empire building. Jeffrey at the time was about 24, and it would have been very difficult for anyone to have effectively carried out as many functions but he had a lot of them.

Q And you disagreed with that.

A Yes, I did.

Q What did Mr. Norman do? Was that Andy Norman?

A Yes.

Q Will you tell the court what his functions were during this period?

A He was the defacto controller. We did not have a controller as such. He made cash flow charts and had control over the day-to-day finances and determined who would get paid and who wouldn't. He was, by February of 1970, the major shareholder; that is, he controlled 30 percent of the stock, or a little bit more, and Harold and Hector and I each had slightly over 20 percent, so that Andy and Harold were running the company.

Q What did Mr. Hector do?

A Well, Mr. Hector's title was chairman of the board

but he was essentially in the same situation that I was, in that Andy and Harold were running the company and they would suffer his suggestions as to what should be done if they felt like it.

Q And you mentioned that you were a part of the top management team. Did this company have an executive committee?

A No.

Q Did it have a finance committee?

A No.

Q Well as a member of top management were there meetings with other members of top management with respect to what was going on in the company?

A There were constant meetings. There were no normal board of directors' meetings in the entire course of the company.

Q You objected to that, didn't you?

A Yes, I did.

Q As a matter of fact, you submitted a memo to management in which you felt that the company should be more formalized, isn't that correct?

A That is correct.

Q When did you submit that memorandum, do you recall?

A Yes. I think it was in January of 1970.

Q Did you ever give a copy of that memo to Mr. Jackson who was on the board of directors?

A I have no idea.

Q Well did you or didn't you?

A I didn't give it to him.

Q Well, that is what I asked.

A I gave it to Robert Hector for distribution to the directors. I have no idea whether he got it.

Q In your conversations -- by the way, you did have a conversation with Mr. Jackson in March of 1970, did you not?

A Yes, I did.

Q And in that conversation did you ever ask him whether he received your January memo with respect to your constructive suggestions concerning the company's structure?

A No, I didn't, but I certainly covered the substance of that memorandum in that conversation.

Q Now where were these meetings held between top members of management?

A Mostly in the president's office -- in Harold Steinberg's office.

Q And generally who was present?

A It could be any combination of the working officers, often with outsiders attending. I mean there was no --

Q Do you have any independent recollection of Mr.

Jackson ever attending any of those meetings?

A None at all.

Q And is that your best recollection, that he did not?

A Not while I was there. He may have attended many. I attended only a small percentage of the meetings. I can testify that I don't recall him at any other meetings I was at.

Q When was the last time before your resignation as an officer that you attended a management meeting?

A I couldn't pick a date.

Q Well do you have any recollection of having ever attended a management meeting during the month of January 1970?

A Oh, I am sure I attended some in February. I just couldn't give you the last date that I was at one. It probably was sometime that last week that I was an officer, between March 1 and March 6.

Q Mr. Oppenheim, is it fair to say that you and other members of the top operating team got together on a weekly basis to discuss what was going on in the company?

A Up to March 8?

Q Yes.

A Well, if you are talking about from when I got back

from Europe --

Q Yes, when you got back from Europe -- you mean April of 1969?

A April 1969 to March of 1970, I was away pretty much the month of January, 1970, but when I was around I was certainly at most of the meetings.

Q You were still earning your $25,000?

A I certainly was.

Q And you were around during the month of March and the month of February?

A Well the month of March I had resigned.

Q How about the month of February?

A The month of February I was there.

Q And in addition to these informal management meetings is it your testimony that commencing in April of 1969 until you resigned Chelsea House never had a board of directors meeting, formal meeting as such?

A Absolutely.

Q That is your testimony?

A That is my testimony.

Q Now did there come a time when Chelsea House became interested in making a public offering of its securities?

A Yes.

Q Can you tell the court when that took place?

A We started -- I think the first time we started was with D. H. Blair and Company, which may be in October of 1967.

Q Several years before?

A Several years before, and these attempts continued right up to the bankruptcy.

Q Did you participate in the decision to attempt to cause Chelsea House to make a public offering of its securities?

A Yes.

Q And were you in favor of it?

A At certain times, yes.

Q Well, were you in favor of it in the Spring of 1969 when you returned to Europe?

A Yes, definitely.

Q Now did there come a time when a law firm was retained to prepare a registration statement in connection with the proposed public offering?

A Yes.

Q Can you tell us the name of the law firm?

A Royal Koegel.

Q And who were the partners in charge, if you know, of the Chelsea House account?

A Mr. Jackson.

Q Stuart Jackson?

A Yes.

Q And when was the first time that you met Mr. Jackson?

A Shortly after I came back from Europe, in April of 1969. It may have been in May or June of 1969.

Q Did you have any conversations with Mr. Jackson at that time?

A Yes. It was mostly introduction, and I had some questions as to, I think, the issue of who was to get the commission. Herzfeld and Stern was supposed to be the underwriter, and there was some question in my mind as to whether anyone was entitled to a finder's fee.

We discussed that.

Q And did you discuss the business of the company?

A I don't think we discussed it in any detail at that meeting.

Q Did you give him any facts concerning the company?

A Not at that meeting.

Q Did you ever indicate to Mr. Jackson at that time that you did not feel that the company was economically viable?

A I thought the company was extremely, economically viable at that point.

Q And I take it from that that you were extremely optimistic in May and June of 1969 about the future prospects of the company?

A Definitely.

Q Subsequent to your meeting Mr. Jackson in May or June of 1969, Mr. Oppenheim, did you attend any meetings relative to the proposed public offering?

A Yes, I did.

Q Did you attend any meetings with an investment banking firm, Herzfeld and Stern?

A Yes, I did.

Q Did Herzfeld and Stern submit a proposal to the company with respect to an underwriting?

A Yes, they did.

Q And was it submitted at a meeting?

A I dont know.

Q Well, were you present when a Herzfeld and Stern proposal was submitted?

A I have no recollection.

Q Were you present when there was a discussion concerning an offering price?

A I think the price had been agreed to before I had come back. I attended a work session which was putting together the prospectus, working out the details of what went in, a sort of line-by-line statement, to make sure that everything in the prospectus was accurate, but I don't think I was at any session where the price was negotiated.

Q Well let me ask you this question, did management have an idea as to what they expected to get per share for the common stock of the company in June of 1969?

A Definitely.

Q What was it?

A $10 a share.

Q And did you concur in that decision?

A Yes.

Q And subsequently did Herzfeld and Stern come back with a smaller number?

A They came back -- well, they had agreed to the $10, and two days before it was to be sumitted to the SEC they said they would do the deal but they wanted it at $7 a share.

Q And what was management's reaction to this proposed reduction in the offering price?

A Well, management wanted to know whether that would be a firm $7 or whether they might subsequently decide at the last minute that they would do it at 4, and when they said no, the 7 wasn't firm, we did not see any reason to tie ourselves to them so we submitted the thing to the SEC without an underwriter.

Q And did you concur in management's decision not to accept the terms if Herzfeld and Stern was not prepared to move forward?

A Yes, I did.

Q Did you still feel in July of 1969 that the fair offering price for this stock was $10 a share?

A I certainly did. I felt so. I didn't begin to lose confidence in the direction of the company. The figures for the first six months of fiscal 1969, as of April 1969, after the loss of $36,000 for the prior year, showed $127,000 plus net after taxes, which was a very, very solid showing, and management --

Q When did you get that number?

A That was in the prospectus. That was the audited Price Waterhouse statement for the first six months of fiscal 1969, as of April 30, 1969.

Q Sir, isn't it a fact that Price Waterhouse audited the company's financial statement for the year ended October 31, 1968 and the six months statement is what we call a stub statement, and was unaudited, or am I wrong?

A It was what went into the prospectus. I took it to be, whether audited or not, an accurate reflection,and I think it was an accurate reflection of what the company had done through April 30, 1969, and we were all very bullish at that period of management being -- and I use "management" in the sense of Harold Steinberg and Andy Norman who controls the books -- continued to hold out that for the full year we would

show a net after tax of $200,000.

Q When did they say this?

A They said that from -- at every point, from the time from June on.

Q June on until when?

A Well until the figures came in.

Q When did they come in?

A They came in in January of 1970.

Q Well what happened? What did they say after that?

A Well that is when they couldn't say anything then. Then they came in. It was a $30,000 loss, and I had been negotiating with Bache and Company at the time, on the basis that we would show a profit of at least 100,000. We had an agreement that they would do some private financing of 100,000 shares at $7 if we showed $100,000 net after taxes.

When the figures came down the meeting was cancelled. It was terriblyembarrassing. Management had no answer. They said, well, that is what it was, and it was at that point for the first time that my confidence in management really became shaken.

Q Did you have any conversations with Arthur Schlesinger, one of the outside directors and tell him, as a member of the board, that your confidence was shaken?

A No, I didn't.

Q Did you call up Stuart Jackson, the other outside director, and tell him that you had no confidence in management at that point in January?

A I visited.

Q Well did you visit with him in January?

A I visited with him in March.

Q But between January and March you said nothing to anybody?

A As I said, I was on vacation for most of March. My first thought was not to -- I then began a plan to bring new management into the company. I was trying to find a way to deal constructively with this problem. As soon as I had a plan I went to Stuart Jackson and told him what the plan was.

Q When you saw the financial statements for the year ended October 31, 1969, which you indicated showed a loss for the year of $30,000, did you ask Mr. Norman, the chief financial officer, for the results of the three months ended December 31, 1969?

A No, there were no -- there were no figures.

Q There were no figures?

A We were on an October 31 fiscal year. There were no -- we didn't keep records. That would be a two-month period. There were no figures. These were figures for the

fiscal year ended October 31, which did not come down until January, and as late as early January, two months after the year had closed, management was still holding out that they had made a lot of money during the year.

Q Let me ask you this, Mr. Oppenheim, when I asked you if in January you had the results of November and December you said, "No."

Is it your testimony that this company did not prepare and disseminate monthly trial balances?

A Absolutely not.

Q Monthly P and L statements?

A No.

Q And even if you had asked you couldn't find it because they did not have it?

A That is right.

Q Well in January even though they did not have --

A I say the accountants, Price Waterhouse, from the period of from January to April, were up there constantly preparing a stub period for a public offering, and had anybody wanted to find out what the company had done they could have asked.

MR. GLASS: Your Honor, I object to that.

THE COURT: Try to answer the question.

Q Let me ask you this question, did you ask Price

Waterhouse?

A No, I did not.

Q You didn't care.

A I didn't.

THE COURT: I don't think that is a proper question.

Q You testified that in January and February Price Waterhouse was on the premises of Chelsea House preparing an additional stub period.

Did they ever prepare it?

A I don't know.

Q Did you ever see it?

A No, I did not.

Q Do you know anybody who ever saw it?

A I know they were up there.

Q But do you know anybody who ever saw a subsequent financial statement prepared by Price Waterhouse?

A Well, I don't know whether -- I know people who might have seen it. I dont know whether they saw it or not, because I don't know whether it was done or not.

Q Very good; thank you.

Now getting back to the way this company conducted its financial affairs, I believe it was your testimony that until you saw this October 31, 1969 financial statement and learned for the first time that Mr. Norman's and Mr. Steinberg's

projections on the profit turned into a $30,000 loss, you had relied upon the representations made by the other members on the top management team; is that correct -- with respect to what was going to happen profitwise to the company?

A I don't know that "relied" is exactly the word. I was influenced by it.

Q You had no place else to go to find the information?

A I probably could have dug a little -- I accepted it to some extent.

Q Tell me how would you have dug -- tell me what you would have done?

A At what period are we talking about.

Q In January, when the Price Waterhouse report came down. I believe it is dated January 27, 1970, so I assume you received it after that. Is that correct?

A Well, I received the information about January 6 of 1968.

Q The official report came out --

A That is right.

Q -- on January 27. Did you have the official report when you met with Bache or did you have --

A No.

Q -- pencil figures, as we call it.

A I guess it was just the pencil figures.

Q Now --

A It didn't matter. There was to be no deal --

Q The bottom line wasn't there.

A That is right. There was a loss, and they thought it was so shocking that two months after the closing date the company had such limited figures wouldn't know whether it had a big win or a small loss. They didn't really want to continue the negotiations.

Q You were a member of the top management team of Chelsea House; correct?

A Yes.

Q In January what financial books and records did Chelsea House keep from which you could have obtained information concerning the financial picture of the company?

A You mean prior to this report?

Q No, after in January, when you learned that this company, instead of making a profit --

A This report was all the information.

Q I believe, Mr. Oppenheim, that in response to my question you said that if you had wanted to find out the financial results of Chelsea House for November and December of 1969 --

A Oh, I see.

Q -- you could have, and you would not have had to

rely on the statements of Mr. --

A Yes.

Q What would you have looked at?

A You could have checked how the sales were going on the trade books, for example.

Q Where would you find that information?

A Well you would call up Harold Steinberg or Fred Israel or any one of top management. That information was generally available.

Q To whom?

A To anyone.

Q In other words, if I called up Random House and had --

A Not Random House.

Q What then?

A If you called up Chelsea House and said "How have the sales gone on the Christmas list?", anyone of a half dozen people could have told you.

Q The Christmas list -- what does that represent?

A That was a trade -- that was the trade books that were put on sale in the fall and in the winter that were very critical as to being one of the major sources of ready revenue for that particular period.

Q Yes?

A And it is known in the book trade that if the books don't sell at Christmas time that they are probably not going to sell, and this was our first attempt to sell trade books in any quantity. We had had maybe three or four trade books out before and we had about seven or eight on the Christmas list, so that would be one thing that one could have found out -- that is one thing that I found out about.

Q Now Mr. Oppenheim, isn't it a fact that in terms of the publishing business what the publishers do, for example, at Christmas time is send out books to various retailers with the understanding that if they don't sell them they can return them.

A That is correct.

Q And so isn't it a fact that in addition to the amount of sales a critical factor is the amount of the terms.

A Well that is true but as early as March the returns were coming in. Secondly, if you don't get any re-orders -- in other words, one book on your list has to be a hit.

Q I see.

A (Continuing) Or else we were going to have a bad situation, and when you don't get any re-orders on any of them, then you know you have a list that was a flop.

Q Now we have three areas on the Christmas list, that you are talking about. We have sales; we have re-orders, and

we have returns; is that correct?

A Yes.

Q And are those three critical factors in your opinion with respect to whether this Christmas listof Chelsea House was a success or failure?

A Well, if somebody were investigating the first thing they would ask "Have you had any re-orders?"

The second thing "How many books are in the stores?"

And, finally "What sort of returns are you beginning to get?"

Q Did you do this?

A No, I didn't.

Q Did you introduce the company to Bache?

A To Bache?

Q Yes.

A Yes, I did.

Q And the first knowledge that you had that they made a $30,000 loss for October was in the first week in January 1970?

A It was two days before the meeting with Bache.

Q The Christmas list was critical for Chelsea House in the subsequent period,was it not? In other words, if Chelsea's Christmas list was a hit in November and December and the firm did very well, this would have been important

would it not?

A It was absolutely irrelevant to the Bache deal. Bache was making the deal on the basis of our showing anywhere from 70 to $100,000 net after taxes as of October 31, 1969. It would not have mattered one whit to them if the Christmas list had sold nothing. They concerned themselves not at all with it. It wouldn't have made one bit of difference to them if the Christmas list had been a smashing success. They might have reopened negotiations later.

Q It made a difference to you?

A Of course it made a difference to me.

Q Did that make any --

A It continued -- first I found out that we had lost money when we had been assured we were making money, and the next thing was the Christmas list wasn't moving.

Q Where did you get the information on the Christmas list?

A The Christmas list came from Fred Israel and Harold Steinberg who dealt with Random House, and after a while people would begin to ask "How is the Christmas list doing?" -- and they would get on the phone and they would call someone at Random House and get the numbers, and then periodically I think within a month after the close of each quarter Random House would forward a chart --

Q A report?

A A report.

Q Now when did Random House forward the chart for the period of October-November-December?

A I have no idea.

Q Did you go up to the company and check that last week, and didn't you look at that report?

A I have no idea when they sent it. That report was not found when I was up there. I wanted to see it and Mae Kessler could not find it.

Q So it is your testimony that Mrs. Kessler, who I take it is a bookkeeper there --

A The bookkeeper.

Q -- never showed you the Random House report?

A She did not have a covering letter as to when it was sent and could not date when it was received.

Q Did you see the report -- yes or no?

A I saw the report.

Q And it had no date on the front of it?

A It had a date for the period covered but there was no transmittal letter as to when it was sent.

Q And that is your testimony?

A That is my testimony.

Q And you don't recall seeing the date May 27, 1970 on

it?

A No, I am certain that wasn't the date, that there was no date. It certainly wouldn't be May 27.

Q Did you look at the subsequent report for January, February and March?

A No, I didn't.

Q Wouldn't that also have been critical because that would show the results --

A Critical for what?

Q Critical to the success or failure of the Christmas list?

A Any upturn or downturn, sometimes a book will catch on by some fluke after. If that is reflected in the reports then that is critical, but if it is just a continuation -- you see, the basic period is the Christmas period, and the fact that there had been no re-orders and my information was widely known by all of management well before March of 1970.

Q When you say "All of management" who do you mean?

A I mean Steinberg, Norman, Friedman, Israel.

Q And you.

A And me.

Q And you.

A Right. The people with whom I negotiated the deal were Norman and Steinberg.

Q What deal?

A The deal to sell my stock -- to buy my stock.

Q You certainly did not negotiate with Stuart Jackson

A No, absolutely not Stuart came into the deal that was negotiated by people, all of whom had read my memorandum, knew of it, had equal access to the facts that I had. There was was no change in price to Stuart. We did not say he did not know this. That was it.

Q Did you ever have a conversation with Mr. Jackson prior to April 10, 1970 in which you asked him whether or not he had read your memorandum?

A No.

Q Did you ever have a conversation with Mr. Jackson or anyone acting on his behalf with respect to that matter?

A No.

THE COURT: On whose behalf?

MR. GLASS: Jackson's behalf.

Q Let me preface it by asking you this question: Mr. Jackson was represented by Mr. Grant Anderson at the closing is that not correct?

A Yes, he was.

Q Did you ever discuss the Oppenheim memorandum with him?

A No, I didn't. I have always assumed he knew of it.

Q You assumed?

A Yes, I assumed.

Q As you assumed that he received the January memorandum which you prepared?

A That Mr. Anderson had?

Q No, that Mr. Jackson.

A No, I didn't say that Mr. Jackson read it. I assume Mr. Grant Anderson had read it because it was widely circulated. It was known to -- it was a cause celebre in the office. It would have been virtually impossible for any one working closing with the deal not to have read it.

Q To your knowledge, between January and the closing, April 10, 1970, how often Mr. Jackson involved with the company?

A Mr. Jackson?

Q Yes. Was he there on a daily basis?

A I am talking about Mr. Anderson.

Q I am talking about Mr. Jackson.

A No. Most of his contact with the company was on the telephone, and my relations with Mr. Jackson were, from the outset, far less than cordial, and as a matter of fact I was involved with a couple of, in my own mind, nasty exchanges with him and had as little to do with him as I could.

Q When was this? Was this prior to the purchase?

A Yes, it was prior to the purchase.

Q When did this take place?

A One took place when Mr. Jackson was to receive a 12,500 share finder's fee.

Q Who was present at that meeting?

A At what meeting?

Q That you said you had a nasty exchange with him?

A The exchange wasn't a face-to-face exchange.

Q Oh, in other words, you never had a face-to face argument with him prior to the purchase?

A We had some disagreements.

Q Well, were they arguments?

A They were disagreements.

Q Were they arguments? People can disagree without arguments.

A Call it what you will.

Q Well you tell me what they were. You were there.

A No, I would say they were less than arguments. However, I forced him to give back stock that he was not prepared to give back, which is something that I don't think he took very kindly to and later denied that he in fact gave it back, and I never --

Q Do you know whether to your knowledge those shares were given back?

A No, I do not.

Q Now despite the alleged acrimony that you claim you had with Mr. Jackson, did there come a time in March of 1970 when you came to see him?

A Yes, I did.

Q When was that?

A March 13, 1970.

Q And how do you fix the date?

A Because I had gone up to pay a transfer tax at Royal Koegel, and the check is dated March 13th.

Q And was this pursuant to an appointment with Mr. Jackson?

A No, it wasn't.

Q What did we do -- call Mr. Anderson's office?

A Yes.

Q And did Mr. Jackson see you?

A Yes, he did.

Q And did you have a discussion?

A Yes, we did.

Q And can you tell the Court what you said to Mr. Jackson.

A Yes. Let me say some fragments of it I recall with precision. Others I can only recall generally. The ones that I can recall with precision I would state.

Q Well, tell us the substance of the conversation?

A All right, if you prefer it that way.

I had been trying to bring about a change in management, to bring in Richard Goodwin as president --

Q Please, tell me what you said to Mr. Jackson -- not what you were trying to do.

A All right.

Q We are interested in conversation?

A I said that I had been to see Earl Braunstein of Herzfeld and Stern a couple of days prior, to find out what was the reason why Herzfeld and Stern actually had backed away from the deal, back in June of 1969 -- July of 1969 -- and he said that the reason was Harold Steinberg, that when it got down to the stretch he lost confidence in Steinberg.

I said that I had spoken to Stan Schuman of Allen and Company, and he said that if we brought in Goodwin that they would open negotiations with us, that they would not deal with Steinberg.

Q Who was Goodwin?

A Goodwin was a classmate of mine at law school, who was an Embassador to the Organization of American States. He was first in the class by a considerable bit. He was a very successful writer and had taken an interest in Chelsea House. He was a friend of mine, and I had interested him --

he was particularly interested in The History Machine and he was interested in coming into the company as president, and he carried a lot of financial clout with him. There were people with him who would have placed their dollars down if he had come in.

Q You told all this to Jackson?

A I told all this to Jackson.

Q What else did you tell Jackson?

A I told him that the New York Magazine article which had come out March 2nd under the banner "Zaniest Publisher in Town", with the lead picture being of a topless secretary, that I thought that was extremely damaging to any possibility that we might have in the financial -- of getting help from the financial community; that our problems were becoming increasingly severe.

Q What problems?

A The financial problems of the company -- that the Christmas list had not been doing well, that we had no definite sources of money available to us, and that people thought that Andy Norman, because he was a multi-millionaire, would bail out the company if he had gotten into trouble but that I did not have that view, and that I thought that a change of management was necessary, and that Stuart should involve himself. Stuart in his responding to the New York Magazine article

statement said that Herbert Levine,who operatesunder the name of Herbert Young as an underwriting company, who Stuart had brought to us, had called him after reading the article and had said "You know, the part about the article that made me or was most true", or something like that, was the one that said "In talking with Steinberg the truth seems to become elusive or disappear" -- and it was a generally cordial meeting, and it ended up with Stuart suggesting that I have Andy Norman call him, and I pointed out that I am having trouble getting into the room with Andy Norman, that Stuart should involve himself, and that was the last meeting -- that is the way it ended at, and I thought that Stuart would involve himself.

The next thing I knew he was buying my stock off of me.

Q Let me ask you this question, Mr. Oppenheim. Do you recall anything else that was said by yourself to Mr. Jackson?

A Yes. I mentioned the difficulty in day-to-day paying of creditors; that Richard Rovere who we owed about $14,000 to, who was a neighbor of mine in Rhinebeck, wasn't getting paid, and that the situation had become increasingly embarrassing, and that I didn't think we would ever be able to get a public offering with Steinberg as head of the company.

Q Anything else?

A The meeting took from 15 minutes to half an hour. That was the gist.

Q Anything else?

A I don't recall specifically anything else.

Q Did you make a memorandum of what you said?

A Well, the memorandum, which was written almost contemporaneously, within a day or two, in fact quotes Jackson in the memorandum.

Q Was that the memo --

A Yes.

Q Did you make a memo of the conversation with Mr. Jackson?

A No, I didr't.

THE COURT: We will take a short recess at this time.

(Short recess.)

BY MR. GLASS:

Q Did you communicate the results of your conversation with any other person? Did you tellanybody else about your conversation with Mr. Jackson in March of 1970?

A I think I told Andy that Stuart suggested that he call him.

Q Did you tell -- I take it by "Andy" you mean Andy Norman?

A Andy Norman.

Q Did you tell Mr. Norman anything else about your conversation with Mr. Jackson?

A No, I told him it pertained to bringing in Goodwin.

Q Now we were talking about how you would go about finding up to date financial information concerning the company, subsequent to your learning of the $30,000 loss for fiscal 1969, and I believe you said that one of the things you would do is check with Random House, and I believe you testified that everyone knew in January of 1970 what the story was with Random House; is that right?

A No, I said by March of 1970 everybody knew.

Q And by "everybody" I believe you characterized that as the inside management or top management, rather, of Chelsea; is that correct? You mentioned Mr. Norman, Mr. Steinberg, Mr. Israel, and yourself; is that correct?

A Yes.

Q And what was the source of top management's basis for knowing of the results of the Christmas list?

A I told you Fred Israel and Harold Steinberg would call up and find out what returns there were in the later stages, what the sales were. It was known that it was doing quite poorly.

Q And did Mr. Steinberg tell the creditors about this,

to your knowledge?

A What creditors?

Q The creditors of Chelsea House. Did he tell them --

A The creditors?

Q The creditors, the people who Chelsea House owed money to. You say it was common knowledge. Did he tell creditors that he had a bad year with the Christmas list?

A No, I am sure he did not.

Q Did he tell the underwriters that he had a bad year with the Christmas list.

A You don't have a bad year with the Christmas list. The Christmas list does poorly.

Q Well, did he make those facts available?

A I have no idea. I had no dealing with any underwriter subsequent to the Bache deal, which ended in January. I was told to stay away from them, and I had resigned March 6th, and I had absolutely no dealings with any underwriters.

Q Between January and March you were still working for the company?

A That is right, and I had no dealings with any underwriters.

Q Did you have any dealings with Mr. Norman, the chief financial officer of the company?

A Yes, I did.

Q Did you ask him what the financial position of the company was?

A What the financial position of the company was?

Q Yes. You had a big stock interest. Did you ask him "How are things? How are we doing?"

A Well, I did not ask him in those terms. I asked him specific things that I was interested in.

Q Well, specifically what did you ask him?

A Well I asked him, for one thing, "How much are liquid liabilities exceeded our liquid assets?"-- because I couldn't get any other people to whom as director of the company period for services rendered.

Q And what did he tell you?

A Oh, about a half million dollars, which had been the figure that had been -- that had been the figure since the beginning of the year -- maybe up one hundred thousand.

Q When did he tell you this?

A In February or March.

Q At your meeting with Mr. Jackson did you report to him that Mr. Norman had told you that the liquid liability of the company exceeded the liquid assets by a half million dollars?

A I told him that we had --

Q I asked you, did you tell him that?

A I may have.

Q Well, did you or did you not?

A I cannot recall whether I said this specifically. I told him that it was necessary for us to get an infusion of capital and that we could not do it with Steinberg as president, and I dramatized the reason why it was necessary to change it as strongly as I could, and the memorandum which I wrote basically lists the reasons that were in my mind at that period of time.

Now whether I specifically said that to him or not, I don't recall.

Q All right, what else did Norman tell you in response to your specific questions?

A Nothing.

Q Nothing? That is the only question you asked Norman?

A Basically.

Q Did you ask him how sales were doing?

A No, he didn't -- I would ask Steinberg or Norman,-- I mean Steinberg or Israel how the sales were.

Q Do you have a copy of that memorandum?

A Not with me.

MR. GLASS: Do you have a copy, counselor?

MR. FLEMING: Which memorandum is that?

MR. GLASS: The March memorandum.

MR. FLEMING: I am sure I do.

(Mr. Fleming hands to Mr. Glass.)

MR. GLASS: May we have this document marked as Plaintiff Exhibit 1 for identification.

xxx (March memorandum marked Plaintiff's Exhibit 1 for identification.)

BY MR. GLASS:

Q Mr. Oppenheim, I show you Plaintiff's Exhibit 1 for identification and ask you if you can identify that document (handing).

A (After examining) Yes.

Q What is it?

A It is a memorandum that I wrote in mid-March of 1970.

Q Consisting of how many pages?

A 13.

Q Does that document represent the entire memo as you wrote it?

A Yes, it does.

Q And is this the document that you previously testified you gave to Mr. Hector and other members of the top management team in Chelsea?

A That is correct.

MR. GLASS: Your Honor, I offer --

A You say "other members". I gave the memorandum to Leon Friedman who was house counsel, to Bob Hector and to Fred Israel.

The last sentence says,

"I have asked Bob Hector to call a Board Meeting not later than April 5th to discuss and vote upon these matters."

MR. GLASS: I believe I had offered Plaintiff's Exhibit 1 for identification in evidence.

Did you want to see it?

MR. FLEMING: We have no objection, your Honor.

xxx (Plaintiff's Exhibit 1 now received in evidence.)

MR. FLEMING: I have an extra copy if the Court would like it.

THE COURT: Thank you.

(Mr. Fleming hands to the Court.)

BY MR. GLASS:

Q Directing your attention to Plaintiff's Exhibit 1 in evidence, Mr. Oppenheim, I believe that you also mentioned in addition to the fact that the current liabilities exceeded current assets by over $500,000, that the net worth was less than $100,000; is that correct?

A That is correct.

Q And what was the source of your information on that?

A That was a figure that the underwriters would tell us. I never knew what its significance was or what it really meant, but it was a figure that I cannot pinpoint.

Q Didn't you previously testify that Mr. Norman had also given you that number?

A If I did it was in error. I tried to recall where I got it. I went back to Andy and he said he was not the source. Then I recalled that it probably came from one of the underwriters who was negotiating with us who said, "Well, your net worth is not even 100,000."

That is probably where it came from.

Q Did you ever ask Mr. Norman any other financial questions about the company?

A Not that I can recall.

Q Did you ever ask him about the dollar amount of sales?

A No.

Q Did you ever ask anybody?

A No.

Q Did you ever ask anyone about what was projected from the Christmas season?

A No.

Q Who made the projections for the company?

A For the Christmas list?

Q Cash flow projections for Chelsea House.

A Oh, Andy Norman made them.

Q And what was your opinion of his ability to make cash flow projections?

A Well, after the year-end figures came in I had a very dim view of their reliability.

Q As a matter of fact you expressed it in the memo, did you not?

A Yes.

Q And you expressed the opinion, did you not, that Mr. Norman's principal function was producing erroneous cash flow projections?

A That is right.

Q And in your conversation with Mr. Jackson, on March 13 did you express that opinion to him?

A I expressed the need to change current management --

Q Did you express the opinion that Mr. Norman, the key financial officer of the company, was involved in producing erroneous cash flow projections for the company?

A Well I simply pointed out that he did --

Q Sir?

A Yes.

Q You told him that specifically?

A I told him that management had held out that there

was going to be a profit shown for the year end, and that Bache walked away from the deal when it was a minus.

Q Did you tell him specifically that the chief financial officer of the company was incompetent -- yes or no?

A Not in those words.

Q And that was a fact, was it not?

A That it was a fact -- he is still there. They are out of bankruptcy. The company is doing well. In my own mind it was a fact.

Q Well did he in fact issue erroneous cash flow projections?

A Well, there was no question of that.

Q In your conversation with Mr. Jackson on March 13 Mr. Jackson expressed, did he not, his high regard for Andy Norman?

A He said "He is a very, very rich man, and I have a lot of respect for him"

Q For that?

A For that.

Q And did he not tell you that he felt that Mr. Norman is the one who should solve this problem?

A Yes.

Q And that he had confidence in his ability to do so?

A Yes.

Q And did you at that time say that Mr. Norman was incompetent?

A I disagreed strongly. I said he should involve himself, and I told him that I was constantly -- here is something else specifically I recall -- I was constantly being told that I should not press my objection so vehemently because in the event that things turned out badly Mr. Norman would put up money and bail the company out, and having heard that I went to Mr. Norman and said "Look, Andy, I hear that if we get in trouble you will bail us out. Why don't we negotiate terms to me?"

Q On what?

A "Upon what basis you will put in additional money if we get jammed up."

Q When did this conversation take place?

A This conversation took place maybe in February or early March.

Q Well didn't you have an earlier conversation with Mr. Norman with respect to the sale of your stock?

A Well let me finish my statement -- and MR. Norman said "No, I won't negotiate it." I told Stuart "If he won't do it how can we rely on his bailing out the company, on what terms will he do it?".

Q And you remember this conversation?

A Yes.

Q Were you deposed with respect to your conversation with Mr. Jackson sometime back?

A Yes, I was.

Q And did you remember that statement at that time?

A I may have; I may have not.

Q Well we will get to that later.

Now getting back to Plaintiff's Exhibit 1 in evidence did you tell Mr. Jackson in your conversation that Chelsea House is going through a period in which the question of its survival is at stake?

A Generally, yes.

Q Specifically.

A I can't say whether I said it in those words. I told Mr. Jackson that was the purpose that I came up there -- I was no longer an officer of the company. I came up urging a change of management. It is not something I do frivolously.

Q The Sears catalog was a pretty important part of Chelsea House's rosy projections in the past, had it not been?

A Yes.

Q And everybody was complimenting everybody else on the tremendous job that had been done?

A It was our first trade book.

Q Did you have any discussion with Mr. Jackson on

March 13 with respect to the fact that despite the rosy projections a loss was recorded on the Sears catalog?

A A loss was not recorded on the Sears catalog. It was a loss for the year that was recorded, and he had the January 27th year-end statement which showed the $30,000 loss. I didn't have to tell him that.

There was no loss on Sears. Sears made a lot of money, but we lost money in spite of Sears making a lot of money.

Q On the trade books.

A There was a profit on the trade books for 1970.

Q For 1970?

A For the year ending October 1969.

Q You were familiar --

A It was a profit in trade.

Q You were familiar with that, weren't you? You kept up with the finances of the company, did you not?

A I was an officer and director of the company, yes.

MR. FLEMING: May we get one question at a time.

Q Who was paid $25,000 a year for being an operating officer, is that correct?

MR. FLEMING: That is established.

A Well, I was paid $18,000 for most of it.

THE COURT: We have been into that.

MR. GLASS: All right.

Q Did you ever tell Mr. Jackson about the setup that the company had with Random House?

A No, I did not.

Q And did you tell Mr. Jackson the fact that the only way that management kept the company going was to publish more trade books in order to get advances from Random House? Did you tell him that in the March 13th meeting?

A I told him the general situation.

Q Did you tell him that specifically?

A I cannot recall.

Q You cannot recall?

A No.

Q Did you discuss the publicity department of Chelsea House with Mr. Jackson before --

A No, I did not.

Q And so accordingly you did not tell him the fact that the publicity department ran costly ads for books, did you?

A That was a detail.

Q It was an important detail, was it not?

A No, it was not an important detail. It was a detail. It was an indication of the mismanagement which I told him in general that the company was -- I also did not

tell him that we should have given Kim Segal a thousand dollar bonus for doing work on the conservation books. There are a lot of details that I did not tell him.

Q These are details that you picked up as part of the management team?

A Absolutely.

Q Based on your day-to-day knowledge of the company.

A Yes.

Q And did you discuss with Mr. Jackson the fact contained in Plaintiff's Exhibit 1 that management continued to add books to its publication list, although they had not priced them out and did not know how much they were going to cost or whether they were going to make money on it?

A I told him in general about the situation -- I may not have told him specifically that. I really don't recall.

Q You don't recall what?

A Whether I told him specifically that.

Q Did you discuss the project I believe you were involved with, the University-At-Large Film?

A I was minorly involved in it. What aspect?

Q Didn't you testify earlier that you were supervising -- that was one of the projects that you supervised?

A No. I said I worked on The History Machine, and that I did some editing on some University-At-Large projects.

I was by no means a supervisor in the University-At-Large program.

Q Did you tell Mr. Jackson the fact contained in your subsequent memorandum, Plaintiff's Exhibit 1, that the Universi At-Large film had lost about $200,000 and was in a state of chaos?

A I may have. I don't know if I used those words.

Q Well what did you say to him about it, if anything, sir?

A I gave him a general run down of the condition of the company in as forceful a way as I could. That was my purpose for going up there, to try to get somebody in the company to direct themselves to the problems.

Mr. Jackson ended by taking the view that Andy Norman is a rich man and he wouldn't even get on the phone himself and call him.

You are asking me if I told him this sentence and that sentence and that sentence. I came up there describing to him --

Q Let me ask you --

A -- why I thought we had to change management.

Q Let me ask you this, it is obvious when you wrote this memorandum you were very concerned --

A Right.

Q --about the future of the company?

A Right.

Q And I believe you testified in a deposition that it took you more than a week to compose this memorandum. You thought about it carefully before you prepared it.

A That is correct.

Q I am sure being a conscientious person you checked out the information before you disseminated it to Mr. Hector and to local house counsel, did you not, and you were satisfied that these were factual problems concerning the company, as a conscientious human being, did you not?

A I wrote it.

Q And you believe in it?

A That is right.

Q And you thought about it before you wrote it?

A That is right. I thought about much of this which was in the forefront of my mind when I went to Mr. Jackson. It was almost contemporaneous with starting to write.

Q And you checked it out?

A That is correct.

Q And you were satisfied, were you not, that the facts contained in this memorandum were truthful and accurate at the time you wrote them; is that not correct?

A Yes.

Q Now getting back to Mr. Jackson's conversation with you on March 13th, what if anything transpired between March 13th at the time you wrote this memorandum that caused you to reduce your thoughts to writing?

A Well I thought that maybe it would be helpful to make the case for bringing in Goodwin, in writing, and there was some -- Mr. Jackson had not said he wouldn't check into it. Andy Norman did not even seem certain that he wouldn't do it. As a matter of fact, he and Hector came with me up to Boston and met Goodwin. It was a very cordial meeting, and so I thought I would state the case as promptly as I could, and that maybe seeing it in black and white it would be persuasive.

Very shortly thereafter management took a different view and decided that rather than deal with it they would buy me out.

Q And you felt as strongly when you saw Mr. Jackson as you did when you wrote the memo, did you not?

A I don't know.

Q You were not concerned about the future prospects of this company at that time?

A I don't know what you mean by "Felt as strongly".

Q When you said --

A Approximately.

Q Well, two weeks before you had a meeting --

A It was about a week.

Q -- where you visited, when you talked with Mr. Jackson about your investment in the company?

A I was concerned.

Q Did you feel the company still had good prospects?

A I thought the company's problems were solvable.

Q Did you discuss the credit problem in the conversation with Mr. Jackson?

A Yes, I did.

Q Did you tell him, as you did in Plaintiff's Exhibit 1, that one of the principal occupations management had was fending off creditors?

A Yes, I did.

Q Did you tell him that if things did not change you believed the company would go into bankruptcy?

A No.

Q Well what did you tell him?

A I didn't say in the memorandum that if things didn't change they would go into bankruptcy. I said that circumstances could develop that if they did not do anything to correct the situation it could throw them into bankruptcy.

Q Circumstances could leave the company --

A Right -- could.

Q --into bankruptcy?

A Could.

Q Could.

A Could, yes.

Q And you told that to Mr. Jackson?

A I said that I did not.

Q Oh, you did not tell him.

THE COURT: You have asked him and he told you.

MR. GLASS: I am sorry.

Q Now getting back to your job as vice president of Chelsea House, I believe you testified that the information concerning the affairs of the company could have been discovered if someone had wanted to discover it; is that not correct?

MR. FLEMING: I object to that, your Honor. It is speculative.

THE COURT: Sustained.

Q If you had wanted to find out about the Random House problem in January of 1970 how would you have gone about it?

A In January?

Q Yes.

A In March?

Q In January.

A I would have called up Fred Israel or Harold Steinberg and asked how the Christmas list was doing.

Q Did Steinberg give you truthful answers with respect to the condition of the company at that time?

A If I persisted.

Q What was his general attitude when people asked how the business was?

A He would say it was good.

Q I think the phrase you used was "great".

A No. Sometimes it was "good". It depended upon his mood. Sometimes he would say "terrible".

Q To you?

A To me, certainly, to anyone.

Q To anyone?

A To anyone. He was a whimsical man. If you asked him "How are things." He will say "Terrible, terrific" -- whatever comes into his head.

Q Did you ever go to Mae Kessler --

A I wouldn't rely on what Harold said.

Q Did you tell that to Mr. Jackson?

A Tell what?

Q In your meeting with him on March 13, did you tell him that you wouldn't rely on what Steinberg said?

A He quoted from the New York Magazine article wherein dealing with Steinberg the truth has a tendency to evaporate. He knew the article well.

Q He knew the article well?

A He knew the article well and he knew Steinberg's tendency not to tell the truth.

Q Did you ever have any conversations in March of 1970 with the bookkeeper?

A No.

Q Do you know of your own knowledge what the state of the books -- of the financial books and records of Chelsea House were in March 1970?

A I saw the books for the first time at the meeting that you referred to, when I went up to see if there was an extract. That is the first time I had any occasion to look at the Chelsea House books.

Q So your answer is that you do not know what the state was in March 1970?

A Absolutely not.

Q And you made no effort to find out?

A Made no effort to find out.

Q Did you ever examine the correspondence files of Chelsea in March of 1970? Were they available to you?

A Correspondence?

Q Yes.

A It depends whose correspondence.

Q Creditors' correspondence.

A Well, there was usually a stack of bills. I never examined the correspondence.

Q Where were they kept?

A I think probably in the bookkeeper's office.

Q Do you know?

A No.

Q Were they locked up?

A I have no idea.

Q Did you ever look at the corporate minutes of the company?

A I don't think there were any corporate minutes.

Q Was the company in March of 1970 involved in any litigation instituted by creditors, of people claiming that the company owed these people money?

A I had mentioned to Stu Jackson at the meeting that after the New York Magazine article came out there was a statement in it where Hector quotes Steinberg as saying "First you get credit from a printer and then you publish some books" --

Q I do not mean to interrupt --

A -- "then you pay the printer if you feel like".

Q Sir, may I ask you whether the company was involved in any lawsuits in March 1970 -- yes or no?

A The only lawsuit that I know of concerned the pur-

chase of a film library.

Q Was the company a plaintiff or a defendant?

A The company, I think, was basically a defendant. The purchaser did not get paid.

Q The company had a defense?

A They claimed spoiled goods, something like that.

Q But there were no creditor lawsuits, to your knowledge, in March 1970?

A Not that I know of. We usually paid at the point of lawsuit.

Q And I believe that in March 1970 all salaries of employees were being paid promptly?

A That is correct.

Q And including your own?

A No, mine stopped March 6th.

Q I say, as long as you were employed were you paid?

A That is right.

12 Q And I believe you testified that in addition to having Rogers and Wells of Royal Koegel as your general counsel, you also employed in-house co nsel, Leon Friedman?

A Well, Leon Friedman served a number of functions.

Q Was one of them house counsel?

A One of them was house counsel.

Q Do you know what he did in terms of legal work for

the company?

A Well, he handled those things --

Q Routine matters?

A Routine matters, yes.

Q How long had Leon Friedman been with the company before Rogers and Wells came on the scene in April of 1969, or rather May of 1969?

A About two years.

Q Two years before that?

A I would think so.

Q And had he been house counsel before that?

A Yes.

THE COURT: Who brought Royal Koegel in?

THE WITNESS: I don't really know. It happened while I was in Europe.

MR. GLASS: May I have a moment, your Honor.

THE COURT: Yes.

(Mr. Glass confers.)

BY MR. GLASS:

Q With respect to Plaintiff's Exhibit 1 in evidence, your memorandum, did you ever give Mr. Schlesinger, the other outside director, a copy of the memo?

A No, I didnot.

Q To your knowledge do you know if he ever received

one?

A No, I don't.

Q And after you prepared the memorandum did you have any discussions relative to the sale of your shares?

A I am sorry?

(Question read by the reporter.)

A Withwhom?

Q Did you have discussions?

A Yes.

Q With whom?

A With the eventual purchasers through Bill Poten.

Q Can you tell us how these discussions were initiated?

A Yes. Shortly after I had given the memorandum to Friedman, Hector and Israel, Poten, who was an employee of the company, came to my office and asked me if I was willing to sell my shares, and I said "Yes."

And he said, "For how much?"

I said, "Five hundred thousand."

I had one hundred and forty-six thousand shares approximately , and he said, "Would you take $3 a share?"

And I said "Yes, I would."

And he said, "What terms would you give?"

And we worked out the terms, which was 22 percent cash. Andy Norman was to guarantee all buyers in the original

group. There were three.

Q Who were they?

A Andy -- Harold Steinberg and a man named Werby who Leon Friedman was representing, and possibly Harold Harris.

I am not sure whether he was in the original group or he came in a day or two later. He said that he would go back upstairs.

The reason that Poten was used was things had become so difficult between Andy Norman and Harold and myself that we thought it would be better to work through a third person.

Q Who was "we"?

A Andy and I.

Q Well haven't you had had earlier discussions with Poten in which you offered him a commission if he could find a buyer for your shares?

A I had some time prior indicated that I was interested in selling.

Q Wasn't he a ship broker or something and had indicated to you that he was used to putting people together?

A He had been a ship broker but I had let people know -- I mean everybody knew I was unhappy there, and he said that--

Q Well did everybody know that you wanted to sell your stock?

A No, not everybody. I did not even know -- if they

had brought Goodwin in I wouldn't have been interested in selling it.

Q Hadn't you offered to sell your stock to Mr. Norman?

A I had.

Q As early as January 1970?

A Probably February.

Q Did you ever tell Mr. Jackson in your March 13 conversation with him that you had offered to sell your stock?

A I may have. I am not sure.

Q You may have?

A I may have. I really can't recall.

Q Now getting back to Bill Poten, was he the go-between -- between you and Norman and Steinberg?

A Yes, and he received a commission from the buyers, and it was understood he was not to receive a commission from me.

Q Now ultimately who were the purchasers of your shares?

A Well the deal was negotiated -- the form of the terms negotiated between Harold Steinberg and Norman and me?

Q Face to face.

Q Well, face to face, some directly with Andy Norman. I am not sure but that is the way it was done. Some of it

was done face to face with Andy Norman. Sometimes we bumped into each other. There were points unresolved and which we worked them out when Poten wasn't there, that is mainly we tried to work through Poten.

Q Who bought your stock?

A Well the people who bought my stock were Leon Friedman, Fred Israel, Harold Harris, a fellow named Hansen, Stuart Jackson, Richard Maybruck, Stephen Wise, and two people who were represented by Norman Lunenfeld. Their names were Anita London and Mary Lunenfeld.

I think that's it.

Q How many shares did Leon Friedman buy?

A He bought under 1000 --- I am not certain.

(Mr. Glass examined.)

731 -- you are right.

Q Did Mr. Jackson participate in the payment of the finder's fee, to your knowledge, to Poten?

A To my knowledge he did not.

Q He did not?

A I don't think so.

Q Were you represented by counsel in this transaction?

A Yes, I was.

Q And who was your counsel?

A Ernest Hammer.

Q When did you first find out that Mr. Jackson was included in the people who were buying your stock?

A Some 4 or 5 days before the --

Q Closing?

A -- closing, right.

Q Are you referring to the April 7th date or the April 10th date?

A No, I think probably around April 5 or 6th -- I am not certain.

Q And after you found out did you have a conversation with Mr. Jackson?

A No, I never had any conversation with Mr. Jackson subsequent to March 13th.

Q Well, did you ever communicate with Mr. Anderson, Mr. Jackson's law associate, concerning your conversations with Mr. Jackson on March 13?

A No.

Q Did you ever discuss Plaintiff's Exhibit 1 in evidence with Mr. Jackson prior to his purchase?

A No.

Q Did you ever discuss Plaintiff's Exhibit 1 in evidence with the attorney who represented Mr. Jackson at the closing -- Mr. Anderson?

A No.

Q I believe you testified that the price per share was $3; is that correct?

A That is correct.

Q And Mr. Jackson paid you as a down payment $10,000 against his purchase price?

A That is correct.

Q And I believe he made one interest payment subsequent thereto, did he not?

A So far as I know.

Q Now did you or your attorney -- how many people did you say ultimately bought your shares? I am sorry, was it about six or seven?

A It was more than that.

Q More than that?

A Yes.

Q About 10?

A Yes.

MR. FLEMING: We have a list here (indicating).

MR. GLASS: Would counsel indicate how many people are on that list, with the Court's permission?

MR. FLEMING: (After examining) 11.

MR. GLASS: 11 persons?

MR. FLEMING: I believe Mr. Oppenheim's original testimony was that he forgot about Mr. Norman and Mr.

Steinberg.

THE WITNESS: That is correct.

MR. GLASS: Thank you very much.

BY MR. GLASS:

Q There were 11 persons?

A That is correct.

Q Tell me, did you or your counsel ever prepare an offering memorandum in connection with this sale?

A No.

Q Did you at any time instruct your attorney -- what was his name? -- Mr. Hammer, to determine whether the purchasers were supplied with information concerning the company?

A No.

Q To your knowledge were there any written agreements between Mr. [illegible] and any of the other purchasers with respect to the voting of their shares?

A I have no idea.

Q With respect to the possible sale of their shares or the use of any proceeds that might be derived from such?

A Well the shares went into escrow until they were paid for, and still remain there.

Q Now I believe you alledged in your answer that the purchasers here were acting as a group. What facts do you

have in your possession that would leave you to make this statement?

A Well I was selling to a group that approached me to buy all my shares. The group that was buying it from time to time came to me and said "Do you have any objection if Leon Friedman" who was house counsel, "takes 700 shares?"

I had no objection whatever, and they were dealing through Grant Anderson who was acting on their behalf.

Q Who is "they"?

A The purchasers.

Q Did you negotiate with Grant Anderson?

A My lawyer was directed to negotiate with Mr. Grant Anderson, who was a lawyer for the purchasers, and they dealt with each other in that capacity.

Q Did your lawyer negotiate the price per share?

A He did not negotiate the price per share, but they drafted the documents that reflected the agreement of the parties.

Q Isn't it a fair statement that the deal was set between you and Mr. Norman and Mr. Steinberg, and all that your attorney did or Mr. Anderson did was reduce that agreement into legal form?

A No. The terms -- the basic terms were negotiated between the parties with help from the attorneys when there

were difficulties, and the documents were drafted by the attorneys.

There was back and forth between the attorneys in the following words: "Grant wants to do it this way. Should we agree to that?", and they changed it. The attorneys obviously did not make the terms of the deal. The principals made the terms of the deal.

Q And in other words, the price was negotiated by yourself.

A The price was negotiated by myself.

Q And the downpayment was negotiated by yourself?

A Right.

Q And the interest rate was negotiated by yourself?

A Right.

Q And Norman guaranteed or negotiated it?

A Right.

Q The two promisory notes were agreed to by yourself?

A Right.

Q And I believe there was some subsequent discussion between yourself and --

A The terms of the promisory note were truly drafted by the attorneys with very little interference at my end. That was left to the attorneys, and, as I say, my attorney was instructed to deal with Grant Anderson who represented the

purchasers.

Q Did Mr. Anderson represent the Lunenfeld's -- Miss London or Miss Lunenfeld?

A Well to the extent that they took papers from him and signed them, each one had separate sheets. Mr. Lunenfeld brought no attorney with him.

Q Was he a lawyer?

A He was a lawyer.

Q Do you know whether he was representing his wife and Miss London, or Mrs. London?

A Yes, he did.

Q Go ahead.

A But he did not draft any documents. He took documents that were drafted for him. He signed what he was told to sign, and he negotiated no terms. He simply took the documents they gave him to sign and he signed it.

Q Didn't he get a Mr. Vogel on this transaction?

A Not to my knowledge.

Q He was not represented by independent counsel?

A I don't think so.

Q Did Friedman represent himself?

A Yes -- I mean to the same extent that anyone did -- they all represented themselves, and Grant Anderson was their designated attorney.

Q Who told you that?

A They did.

Q Each one individually?

A No, Steinberg and Norman.

Q Norman?

A They appointed their lawyer. We had to have some way of dealing, and Grant Anderson was the person who my lawyer made the deal with in drawing the documents. Nobody said "I am going to have -- I don't want Grant Anderson to represent me. Have my attorney -- have your attorney consult Mr.Vogel" or "Have your attorney consult someone else"-- nobody said that. Everyone agreed that my attorney could deal with Grant Anderson.

Q Did you ever ask anyone whether they were in fact, anyone of the purchasers, as to whether or not they were in fact acting as a group?

A No, I never asked.

Q Did Chelsea House issue financial statements as part of the ordinary course of this business?

A Did they issue financial statements?

Q Yes.

A There was an annual statement.

Q In addition to the annual statement did they issue interim financial statements?

A No.

Q Did they have what we call internal financial statements for management, for operating management?

A Not really.

Q Well what does "not really" mean?

A I mean when you say "financial statements" --

Q Well let me be more specific. Were interim balance sheets prepared between the annual statements?

A Only if there was a stub period for some particular purpose, like the S-1 which had the July -- I mean the April 30 figures. There might be some specific purpose.

Q Well, let us be specific. In January, February or March.

A There was absolutely none.

Q How about a monthly profit and loss statement?

A Absolutely none.

Q How about a monthly cash flow projection?

A If any had them he was the only one who saw them.

Q And you never saw them?

A I never saw them.

Q And what basis did you say in Plaintiff's Exhibit 1 that Norman was involved in preparing erroneous cash flow statements?

A It was on the basis of the year-end statement, that

for six months and for two months after the year ended he was holding out that we were going to have between 100,000 and 200,000 net after taxes, plus, and a few days later it turned out to be a minus.

Q Were any of the progress reports delivered to the board of directors or to members of management with respect to sales earnings?

A Well sales, I don't know what you mean by "progress reports." Random House, as you know, submitted periodic statements.

Q Were they disseminated to the board of directors?

A No, they were not.

Q When was the first time that you learned that the company had a substantial imbalance with Random House concerning advances received from Random House as opposed to sales which would operate as a set-off.

A Well I knew that the Christmas list had not generated any plus. The advances were -- there were losses, no backlog, and I knew we were going ahead with many, many big projects where we were getting subsequent advances, and if those projections did not turn out we would owe them a lot of money, and that I got to see, I would say, maybe in late February, early March.

Q In 1970?

A Yes.

Q And what was the source of your information?

A Well, I knew that period. Harold was going over to Random House and coming back with a check for an advance on 10 books for the Fall list.

Q How did you know that?

A Because he would wave the check and say "Look at what I got from Random House."

Q I see. In other words, you got the information from Harold Steinberg?

A Yes.

Q And he would say "I received a check from Random House."

A Exactly, and he once went over with a strange list and they gave us $240,000.

Q When did he inform you of that?

A I don't know. I am making up a figure. He would go over and say "Let's have a meeting -- I have a meeting at Random House. I want to give them 10 books for the Fall list."

Then he would go over, and then a few days later a check would come in and he would show it -- that is the way he was doing it.

Q When did you start with Random House?

A When did what?

Q When did Chelsea House commence doing business with Random House?

A I think in -- well it was when the Sears catalog --

Q In other words, prior to 1969?

A There was a peculiar history on that. They came in sort or after the fact. It may have been the last month of 1969 or early 1970 -- they may have come in as early as Christmas 1968, or early 1969.

Q When did the written report from Random House for the three months ended March 31 come into the company, if you know?

A Three months ended March 31?

Q Yes.

A I have no idea.

Q Was the company making public the Random House problem or was that for internal management?

A Making public?

Q Yes.

A They didn't see it as a problem.

MR. GLASS: May I have a moment, sir?

THE COURT: Yes.

(Mr. Glass confers.)

MR. GLASS: Your Honor, I would be very grateful if we could adjourn at this point.

THE COURT: We will adjourn until 2 o'clock.

MR. GLASS: Thank you, very much.

THE CLERK: The Court stands adjourned until 2 o'clock.

(Luncheon recess.)

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AFTERNOON SESSION

2.00 P.M.

JACK OPPENHEIM, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. GLASS:

Q Mr. Oppenheim, I believe you testified in the morning session that you had learned of the pencilled figures on the October 31, 1969, financial statements some time in the early part of January, 1970?

A Yes.

Q About that time did you have a meeting with representatives of Price, Waterhouse concerning those pencilled statements?

A I had meetings with them prior to that. I had no meetings with them after that.

Q Do you recall who you met with?

A Sherry Biggs.

Q Anyone else?

A Not that I can recall.

Q Do you recall whether any other member of the Chelsea management was present when you had those discussions with Mr. Biggs?

A Yes, Andy Norman and Harold Steinberg. They were going on constantly.

A In addition to their coming in and out or however you characterize it, did you tell anyone about your meetings with Price Waterhouse?

A There was nothing to tell. I was simply trying to get confirmation that the year-end figures would in the range of seventy to one hundred, one hundred fifty thousand net after taxes, and I would go in and say, "Is that what it is going to be?"

They would say, "We are still working on it."

Q I am referring specifically to after they gave you their pencilled figures which showed a $30,000 loss, did you then have a conversation with them?

A No.

Q Did Price Waterhouse ever indicate to you prior to your receipt of the pencilled figures that the profit and loss of the company was going to be, the loss of the company was going to be $30,000? Did they give you a preliminary number?

A No.

Q At any time did you dispute with Mr. Biggs his estimate of a $30,000 loss?

A No.

Q At any time did you dispute with Mr. Biggs or anyone else in Price Waterhouse concerning their

allocation of work in process or any other item to come up with the $30,000 loss figure?

A I didn't discuss anything with them subsequent, so it is the same answer to every question. No.

Q Did you ever accuse Mr. Norman of juggling the figures to show a loss so that the company could not go public or have a private placement?

A Many years after the sale.

It occurred to me that since the company was by now out of Chapter XI, doing quite well, and had the Bache deal gone though, Norman would not have been able to pick up as great a share of the company -- I think he now controls about 95 per cent of it -- as cheaply and I never accused him of juggling the figures.

I indicated because it was at a meeting with Norman and Price Waterhouse over the weekend that a figure of $30,000 was presented to you as final and indisputable, that we were told that perhaps that wasn't an accident; perhaps within the range of good accounting practice they might have chosen to have a lower number and let the company lapse into a desperate situation.

Q But it is your testimony that this conversation did not take place in January, February or March of 1970?

A Absolutely not. It wasn't at least until a year or two after. It didn't occur to me at the time.

Q I believe you testified in the morning session that Mr. Werby had been presented to you as a potential purchaser of your shares, or one of them?

A That is right.

Q Do you recall how many shares were indicated he might purchase?

A It was my understanding it was to be roughly about a third of the deal.

Q A third of your 140 some-odd thousand shares?

A Right.

Q How did he come into the picture?

A He was presented hy Leon Friedman. I never met the man and I don't know how Leon met him.

Q Did you ever ask Mr. Friedman if Mr. Werby had received a copy of your memorandum, Plaintiff's Exhibit 1 in evidence?

A Mr. Friedman had read it and I certainly never asked him. It never occurred to me to ask anyone if they had received a copy of my memorandum which contains all sorts of extraneous material and was one of many memos which I have written.

It wasn't something that when somebody came in

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that anyone would naturally think to say, "Have you read my memo?"

Q Are you indicating that in addition to the January memo that we referred to in the morning session and Plaintiff's Exhibit 1 in evidence, that you wrote other memos?

A Dating back to the beginning of the company, yes.

Q I am talking now about the period of January, 1970.

A I don't think there were any.

Q May I finish my question?

A Yes.

Q January, 1970, up to April 10, 1970.

A No, I don't think there were any in that period.

Q Did Mr Friedman ever tell you that Mr. Werby declined to purchase one-third of your shares after he had read Plaintiff's Exhibit 1 in evidence?

A No, he did not.

Q Prior to the time that you learned of the pencilled figures of Price Waterhouse showing a $30,000 loss for Chelsea's yearend October 31, 1969, had Price Waterhouse or any of its representatives indicated to you that they believed that the 1969 fiscal year would be

profitable?

A Yes.

Q When did that occur?

A Quite close to when the figures actually came down, to the last few days of December, early January.

MR. GLASS: May I have a moment, your Honor?

(Pause.)

Q So that Price Waterhouse as well as Mr. Steinberg and Mr. Norman felt that the company was going to show a profit for the year ending October, 1969, before the audit was finished?

A It wasn't a definite statement but they did indicate that, yes.

Q Now, we discussed in the morning session your meeting with Mr. Jackson -- before that I think you mentioned that house counsel bought about 700 some-odd shares of your stock, Mr. Friedman?

A Yes.

Q Did he pay you for this stock?

A Yes.

Q What was the manner of payment?

I owed him some money and we subtracted the amount that I owed him, the amount of stock.

Q How much did he pay you?

A He didn't.

Q How much did you give him credit for?

A The full price, 21 whatever.

THE COURT: 21 what?

Q 761 shares times 3, that is 2283.

A I owed Friedman about $9000 from a bet.

Q A bet?

A A bet.

Q A gambling debt?

A A gambling debt, and it was based on how many books, copies of a certain book that Chelsea House published would sell and I was way, way off and as a result I owed him $9000.

A So when this transaction occurred Leon said, "Why don't you pay me?" And I forget what the amount was, some $2000 or $3000, and I gave him a check for that amount, and that washed out that $9000 debt. That was the means of payment.

Q But you never received any cash for the 2283 purchase of shares?

A I received absolution from a debt of honor as anyone who deals with me knows, I pay.

MR. GLASS: I believe Mr. Friedman is going to be a witness, and I felt it relevant in terms of his testi-

mony.

Q Getting back to something more relevant, namely, the conversation that you had with Mr. Jackson on March 13, 1970, I believe you testified with respect to the items that you now recall you discussed with him this morning, is that not correct?

A Some of them.

Q I believe you testified that you went into the financial situation of the company and discussed the problem of the liquidity, the excess of liabilities over assets, $500,000, is that correct; and we reviewed the memorandum this morning.

A I didn't say that I said $500,000.

Q What did you say?

A If you want to read the record. I can't guess at it at this point.

Q In addition to the discussion that you testified to this morning concerning the items in the memo, were any other items that are not in Plaintiff's Exhibit 1 in evidence that you discussed with Mr. Jackson on March 13?

A Could you repeat the question?

(Question read.)

A I can't really thing of anything. As I say, I can't recall with absolute precision every sentence that

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was involved in that conversation.

Q Well, can you tell the Court the substance of whatever else you may have discussed without precision?

MR. FLEMING: In addition to what the man testified to this morning, your Honor?

MR. GLASS: Yes, that is correct

THE COURT: I hope we are not going to go over all this.

A I really can't think of much more.

Q I didn't hear you.

A I can't think of anything else that took place.

Q What was the principal object of your seeing Mr. Jackson on March 13?

A The principal object was to inform Mr. Jackson that I thought that we needed a change of top level management; that our credibility in the financial community had broken down that the New York Magazine article was causing us problems with creditors; that we were having a cash-flow problem in the company and that I didn't see that the existing management had any solutions for the problem; and that Richard Goodwin was available to come in, and that Andy and various others on the board were considering it and that I thought he should throw himself into that issue.

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That was the substance of it and it was gone over at some length, about a half-hour.

Q What was your object in coming to see Mr. Jackson?

A He was an officer and a director. I was no longer an officer, I was a director.

Q What officer was he?

A He was secretary.

Q What did he do as secretary?

A I don't know what the secretary does.

Q You were one of the management team of the company. What did Jackson do when you were being paid $25,000 a year?

A I did not deal with Jackson. I had no dealings with Jackson and he dealt mainly with Steinberg. I was told that he arranged for bank loans, brought in Price Waterhouse, he brought in underwriting companies. He was involved with the finances of the company.

Q In what respect?

A It was necessary for him to know the circumstances of the company.

Q Who told you that?

A I know as a fact that he brought in Price Waterhouse.

Q Who told you that he was aware of the finances

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of the company?

A I didn't see how it was possible for him to function --

THE COURT: You asked him a question. Answer the question.

A I assumed in order to do that,to arrange for bank credit and various other things, that it was necessary for him to know. Perhaps he knew nothing, perhaps it was totally a paper function. Perhaps he just signed his name secretary and dirctor and legal counsel and didn't do anything.

Q You don't know one way or the other?

A No, I don't know one way or the other. In this trial I am beginning to think he didn't know anything,but that was not my understanding at the time.

Q From when did you derive your understanding?

A From Harold Steinberg, Jeffrey Steinberg, from various others in the corporation.

Q Let us take the item that you specifically alluded to.

Now, he recommended to the company that they retain the accounting firm of Price Waterhouse, correct?

A I think he actually made the contacts. He didn't just say, "Try to contact Price Waterhouse."

Q Did he ask them if they would take the account, correct?

A Right.

Q What banks did he introduce Chelsea to?

A I couldn't tell you the name. Perhaps he could tell you.

Q Do you know it for a fact?

A No, I don't.

Q Mr. Oppenheim, do you know for a fact today whether Mr. Jackson introduced Chelsea House Communications, Incorporated to any bank at any time for any purpose?

A I do not know that as a fact. That is my understanding, however. I could be wrong.

Q You do know, however, that he did introduce Chelsea House to the investment banking firm of Herzfeld & Stern, that you do know?

A Yes. Also Young, also E.L. Aron & Company.

Q Have you ever heard the name Maybruck?

A Yes.

Q Isn't it a fact that Mr. Maybruck introduced Chelsea House to the Young firm?

A Mr. Maybruck is Mr. Jackson's client.

Q Isn't it a fact that Mr. Maybruck introduced Chelsea House Communications to Herbert Young & Company?

A It was my understanding it was through Mr. Jackson.

Q On what do you base that understanding?

A I was told this.

Q By whom?

A I don't recall by whom. It was Mr. Maybruck was Mr. Jackson's client, put it that way.

Q It is on the basis that Mr. Maybruck was Mr. Jackson's client that you assumed that he brought Young to Chelsea House?

A Right.

Q Let us take E.L. Aron. On what basis have you stated here today that Mr. Jackson introduced Chelsea House to the investment firm of E.L. Aron?

A That is my understanding from others in the company.

Q Which others?

A Second-hand through Harold Steinberg and Leon Friedman. It was their best recollection that they came in through -- that Aron & Company came in through Stuart Jackson.

Q Specifically of your own knowledge as a vice-president of Chelsea House what, if anything, did Stuart Jackson do as secretary of your company?

A I have no idea.

Q Is it correct that you don't know whether he did anything?

A His affidavit indicated that he in the bankruptcy proceeding when he was justifying his fee indicated that he had --

Q Outside of the bankruptcy proceeding.

A No, this is dated back to prior to the bankruptcy proceeding that he was fully informed as to the business of the company. Now, I assume that was true.

Q What did he do as secretary of Chelsea House?

A I have no idea what he did. As I say, our relations were never ~~cordial and I never~~ checked on what he did and he never checked on what I did.

Q Let me ask you this question, Mr. Oppenheim: you testified that you resigned by letter in February as an officer of the company effective in March, is that correct?

A That is correct.

Q To whom did you send this letter of resignation?

A I think it was sent to Harold Steinberg.

Q It was not sent to the secretary of the company?

A No, it wasn't.

Q Was a copy sent to the secretary of the company?

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A I have no idea; not by me.

Q Not by the man who resigned?

A Not by me.

Q Did you ever send anything to Mr. Jackson?

A Not a thing.

Q Isn't it a fact that the sole purpose for Mr. Jackson's becoming secretary of this company and a director of this company was as window-dressing for the purpose of the public offering and that no one, including yourself, expected him to do anything in the company?

MR. FLEMING: I don't know that a trustee could be window-dressing, and I object to this question.

MR. GLASS: There is no evidence as to a trustee.

MR. FLEMING: As a director, I am sorry.

THE COURT: I don't know how he can answer the question unless he participated in it.

MR. GLASS: May I withdraw that and start over, sir?

Q At the time Mr. Jackson became secretary and director, this was a private company, was it not?

A Yes, it was. It always has been.

Q Did you consent in writing that Mr. Jackson become a secretary and director of this company?

A I don't think I was ever consulted.

Q Did you sign the waiver of notice to the minutes of the directors' meeting?

A Possibly. I don't know. I have no objection.

Q Certainly you reviewed the registration statement, you saw that he was listed as secretary and director?

A I had no objection to his becoming secretary and director. However, it was not my understanding that it was solely window-dressing.

Q What was your understanding?

A I thought he would perform some function as legal counsel, as director, and as secretary.

What those functions were, I wasn't sure, but it was not my understanding it was essentially window-dressing.

Q Did anyone tell you that he was going to have anything to do about book selection?

A Absolutely not.

Q That he was going to have anything to do with the supervision of the financial books and records of the company?

A Not supervision, but it was the understanding that a man in his position with such an influential firm would be helpful for us in making financial contacts and would be useful in assisting the company at an appropriate

level in certain deals where we couldn't make a contact ourselves.

Q Is that window dressing?

A No, not necessarily.

Q Did Mr. Jackson have anything to do with the hiring or firing of personnel?

A Absolutely not.

Q Did Mr. Jackson have anything to do with the management of the business affairs of the company to your knowledge?

A Yes. I think he was consulted on underwritings; his opinion as to whether certain things should happen or not.

Q What things?

A As towhether we should have accepted certain underwritings, offers solicited.

Q Did you consider an underwriting to be in the ordinary course of the business of a company or a special situation?

MR. FLEMING: I object.

THE COURT: I will allow that.

A No, it is certainly not the ordinary course of business.

Q Isn't it a fact, sir, that Mr. Jackson had

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nothing whatsoever directly or indirectly to do with the daily business of that firm, Chelsea House Communications, Incorporated?

A I couldn't say that he had nothing to do with it. He had very little to do with it.

Q You knew it?

A Of course.

Q In March of 1970 and April of 1970?

A Right, that is why I went in March and told him of the problems.

Q Except for the recommendation and introduction of Price Waterhouse and the underwriting of Chelsea House, do you know one other thing that Mr. Jackson did in connection with this company?

A Yes. I think he was involved in the lawsuit between the film company, the film library and Chelsea House.

As I say, I never dealt directly with him but I would get accounts. I know he was contacted not on an infrequent basis by Steinberg on questions of the company, his advice.

Q Who told you this?

A Harold Steinberg and others, and I will testify to it.

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Q Who else?

A Leon Friedman.

Q Who else?

A Andy Norman.

Q Leon Friedman is a lawyer, is he not?

A Yes, and he dealt with Stuart Jackson on legal problems of the company.

Q How about business problems?

A Legal problems are business problems.

Q What about the day-to-day management?

A I said he was not involved with the day-to-day problems of the company.

Q You said Leon Friedman is going to testify to that, is that right?

A To what?

Q To this fact, that he had daily contact with --

A I didn't say daily.

MR. FLEMING: I object to the form of the question.

THE COURT: I will sustain it.

Q Friedman is the same man that you settled your stock purchase with on account of that bet, that wager, isn't that right?

A Yes, exactly.

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MR. GLASS: I have no further questions of this witness at this time.

MR. FLEMING: May I have each of these marked, please.

xx (Defendant's Exhibits A, B and C marked for identification.)

CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Oppenheim, you mentioned a New York Magazine article in your direct examination.

I show you Defendant's Exhibit A for identification. Is that the article?

A Yes, it is.

Q Also there was discussion about the audit, the financial statement for the fiscal year ending October 31, 1969, of Chelsea House.

I want to show you what is marked as Defendant's Exhibit B and ask you if you recognize that as the Price Waterhouse opinion and accompanying financial statements for this period of time?

A Yes, I do.

Q There was also discussion I believe about a possible registration and public sale of Chelsea House stock.

I show you what has been marked as Defendant's Exhibit C for identification. I will ask you if that is a copy of the prospectus which was prepared for that purpose?

A Yes, it is.

MR. FLEMING: I offer each of those in evidence, your Honor.

THE COURT: Are these listed on page 12 of the pre-trial order?

MR. FLEMING: They are, your Honor, I am informed.

MR. GLASS: We have no objection.

xx (Defendant's Exhibits A, B and C received in evidence.)

MR. FLEMING: We have extra copies for the Court of each of these three exhibits.

THE COURT: All right.

Q Mr. Oppenheim, you testified about a conversation with Mr. Jackson on March 13, 1970, I believe you fixed as the date, is that correct?

A Yes, sir.

Q During that conversation at any time or in any way did you offer to sell Mr. Jackson your stock in Chelsea House?

A No, I didn't.

Q During that conversation did you make any false statements to Mr. Jackson?

A No, I didn't.

Q Directing your attention to the actual sale of your stock, first, from whom did you first learn, what person did you first learn that someone was interested in buying out your stock?

A William Poten.

Q Who is Will Poten?

A An employee of Chelsea House.

Q Can you fix an approximate time when Poten told you that some people were interested in buying you out?

A It was about two weeks before April 10; some time in the last week in March, 1970.

Q As best you can recall it, what did Poten tell you?

A He asked me if I was willing to sell my shares to a group, a management group, and I said yes.

Q Did Poten tell the members of the management group to whom he was referring at that time?

A Yes. That first meeting we determined the price, who the --

Q Will you answer my question? Did he tell you

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the members of the management group he was representing at that time?

A As best I recall, the first group that he told me at that time was Steinberg and Andy Norman, Werby, who Friedman was representing, and perhaps Harold Harris. I am not sure whether Harris came in that day or the next.

Q Did he mention Jackson's name at that time?

A No, he did not.

Q Did there come a time when you agreed to sell all of your stock to a group?

A Yes.

Q To whom did you first communicate this agreement?

A To Poten.

Q Was this as a result of negotiations, conversations with Poten?

A Yes.

Q Who would go back to the people he was representing and return to you?

A That is correct.

Q Poten was acting there as agent and basically as intermediary?

A That is correct.

Q Was the price fixed?

A It was.

Q What was the price fixed?

A $3 per share.

Q Do you recall when that price was fixed?

A We really fixed it at the first meeting?

That is, I offered to sell at this price and then he came down and said that was all right.

Q At the time the price was fixed was the name Jackson mentioned to you as a participant?

A No.

Q At any time either prior to this first conversation with Poten or thereafter up to the closing of the sale of the stock, did you ask Jackson to buy the stock?

A Absolutely not.

Q From whom did you first learn that Jackson was participating in this buy-out of your stock?

A I think from Poten. It must have been from him or Anderson.

Q Grant Anderson was an associate of the Royal, Koegel firm?

A Yes.

Q And Anderson was doing the legal work representing the purchasers?

A That is correct.

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Q And Harold Harris was doing the legal work representing you?

A Yes.

Q With respect to the other additional individuals who eventually took some of the participation in this buy-out, did you solicit any of their participation?

A No.

Q Any single one of them?

A No.

Q Or discuss it with them?

A No, I didn't.

Q Is it a fair statement that as far as you were concerned you were dealing with the original group?

A Yes.

Q Am I correct that the memorandum which has been the subject of questioning here had in fact been delivered to representatives of the original group?

A That is correct.

Q Am I correct that the very --

A Except it had been delivered to Friedman who was representing Werby. I have no way of knowing whether Werby ever saw a copy. To my knowledge it had not been delivered to Harold Harris.

Q Had it also been delivered to the chairman of the

board, Mr. Hector?

A Yes, sir.

Q Does that mention that a meeting of the board of directors has been called to discuss the problem?

A Yes, it does.

Q Any attempt on your part to withhold or conceal any opinion or relevant fact of which you were aware or you thought was relevant to the future of the company?

A No.

Q Any intention to defraud anyone who chose to join in the buy-out of you?

A No.

THE COURT: You say this was distributed prior to the time? Which time, the time when plaintiff became part of the group?

MR. FLEMING: I think your question is when the memorandum was distributed.

THE COURT: Before any of this happened? I wanted to know if that included the entry of this particular plaintiff into the buying group.

THE WITNESS: The memorandum was distributed several weeks before there was any talk of the sale.

MR. FLEMING: I am glad your Honor raised it.

Q You fixed your meeting with Mr. Jackson at Mr.

Jackson's office, which you testified you discussed at least in general terms the condition of the company as taking place on March 13.

A Just a second. It may have been a week prior to when the sale talk was initiated. It seemed to be a catalyst in bringing on the sale.

THE COURT: It was not material distributed in connection with the sale?

THE WITNESS: No, it wasn't.

MR. FLEMING: Is that sufficient, your Honor?

THE COURT: Yes.

Q In your memorandum you used the phrase "current liabilities exceed current assets by $500,000."

What did you mean by the term "current assets"?

A I meant cash and receivables.

Q Liquid assets?

A Yes.

Q There was testimony, examination of you about Mr. Jackson becoming a director and secretary of the corporation. Do you recall that examination?

A Yes.

Q During that period of time in connection therewith did Mr. Jackson also receive 12,500 shares of Chelsea stock?

A Yes.

Q For what purpose was this stock given to Mr. Jackson -- first of all, when did that happen?

A That happened some time prior to July 29, which was the date of the proposed public offering. It was to be a finder's fee on the deal and was listed as such in the prospectus.

Q So that the 12,500 shares was given to Mr. Jackson some time prior to July 29, 1969?

A That is correct.

Q This was at or about the time that he also became secretary and director of the corporation?

A I think so, yes.

MR. FLEMING: I have nothing further at this time. I reserve the right to call Mr. Oppenheim in his own defense should that be necessary.

REDIRECT EXAMINATION

BY MR. GLASS:

Q Mr. Oppenheim, I show you Defendant's Exhibit C in evidence and ask you whether in the prospectus it says that Mr. Jackson is getting his shares as a finder's fee?

A It was in the original one where Herzfeld & Stern was underwriting it. When Herzfeld & Stern dropped out it was removed. As a matter of fact, if you want I would

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supply that document. I think Mr. Jackson can confirm that was the arrangement.

It was not in this because at my insistence this stock was returned or at least it was dropped out as a finder's fee.

Q Prior to your preparation of Plaintiff's Exhibit 1 in evidence, you had received Price Waterhouse's financial statement, had you not?

A I think I may have received it, although I have no recollection of having done more than look at the bottom line.

As a matter of fact, some time after when I was examined before trial, I could not recall whether in fact I had a copy or not. I assume I did receive it.

Q Did you ask anybody any questions about it?

A No, I didn't.

Q Did you consider that current assets and liquid assets were the same thing?

A That was my understanding.

Q I believe you testified on your direct examination in response to my question that you knew at least five days or seven days prior to the closing that Mr. Jackson was a purchaser of your stock, is that correct?

A I think I said about five days.

Q You also knew prior to the closing that there were people in the group of purchasers that were not officers or directors of the company?

A At what point?

Q Prior to the closing.

A Prior to the closing, yes.

MR. GLASS: I have no further questions of this witness.

MR. FLEMING: Nothing further at this time.

THE COURT: You are excused. Thank you.

(Witness excused.)

MR. GLASS: With the Court's permission I would like to call Mr. Harold Steinberg as a witness.

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HAROLD STEINBERG, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GLASS:

Q Mr. Steinberg, where do you reside?

A East Hampton, Long Island.

Q What is your occupation?

A Publisher.

Q Are you connected with a corporation?

A Yes.

Q What is the name of that corporation?

A Chelsea House Educational Communications Incorporated.

Q What is your position with that company?

A I am both the chairman and publisher, chairman of the board and publisher.

Q Taking you back to 1969, what was your position with the company at that time?

A I was president.

Q Were you also a director?

A Yes.

Q Were you also a substantial stockholder?

A Yes.

Q In 1969 were you the chief executive officer of Chelsea House?

A I was president of the company and as such I assume I was, though we often worked together.

Q Who is "we"?

A Andrew Norman, a partner, and Bob Hector, then a partner, because I was -- could be considered to be chief executive officer, but we had no such title.

Q Was the defendant, Jack Oppenheim, also a part of the management team in 1969?

A Yes, he was a vice-president.

Q What was his office?

A Vice-president.

Q Was he a director?

A I believe so, yes.

Q Was he a member of the predecessor partnership that preceded the corporation, if you recall?

A If I recall, there was a technical question whether he became a member of the corporation or became a partner and then became a member of the corporation. I can't actually recall, but there are documents I am sure.

Q At any rate, when the corporation was organized he was part of the corporate team?

A Yes.

Q Directing your attention to 1969 and April of 1969, did there come a time when you decided to retain a law firm in connection with a public underwriting?

A Yes.

Q Can you tell us which law firm you contacted?

A At that time we contacted -- it was called Royal, Kaegel & Wells, if I am correct about the exact name.

Q Did you contact any specific partner of that firm?

A I think I came to see Stuart Jackson.

Q Did you have a conversation with Mr. Jackson at that time?

A Yes, we did.

Q As a result of that conversation did Chelsea House, Incorporated retain Royal Kaegel & Wells as its general counsel?

A I don't know if the name of the company then was Chelsea House Communications, Inc. I think Lochsley Hall was the holding corporation. Chelsea House Communications was the latter designation.

Q Did you retain Jackson?

A We did.

Q Thereafter did Chelsea House engage the Royal

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firm to do anything, any specific legal work?

A Specific legal work, do you mean in the nature of contracts?

Q Any specific project.

A The major project at the time as I remember it was theprospectus of making a public offering.

Q Did you retain his firm to prepare a registration statement?

A Not at that time. I don't think that was the issue at that point.

If I remember correctly, we knew we might be coming into a position where we could become or try to become a public company. Several members of the board were urging that to happen.

Q Who?

A As I remember, Jack Oppenheim was --

Q The defendant?

A The defendant. The late Stephen Wise was; Robert Hector was.

Q Hector at the time was chairman of theboard?

A I believe so. I think he was interested in it. I wasn't as strong an advocate of that position as Steve Wise or Jack Oppenheim was, but I certainly was interested in doing that.

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Q Did there come a time when you engaged Mr. Jackson's firm to prepare a registration statement?

A I just want to pull back on this a little bit. It wasn't exactly the preparation of a registration statement.

We engaged a prestigious firm. We were a young, new company with not much financing, trying to establish ourselves in the publishing world and business.

At that time, if you remember, this was the style of a lot of companies, going public; it was considered quite the thing to do. Then we had had a rather good career of it up to then.

Q You mean the company?

A The company. It had done quite well, we thought, from rather humble beginnings and we knew if we wanted to undertake a public offering we should have a law firm that was prestigious, whose name had some impact in possibly the financial world, and that was the same reason, the same rationalization for hiring Price Waterhouse as one of the major accounting firms in the City.

Q When you say "we," whom do you mean?

A Certainly myself, Andrew Norman, Jack Oppenheim. I don't know, Jack Oppenheim during the course of his employment was, he was away about I would say maybe 18

months or two years at a time in Europe on two different times, so I can't definitely say at this moment whether he had a part in this decision.

Q He was certainly back from Europe in April of 1969, was he not?

A I just can't say offhand. That is a matter of record. The fact is that the company felt that we should hire Royal, Kaegel & Wells -- I don't know the full name of the firm at the time.

Q After you retained the firm did there come a time when management made the decision to file a registration statement with the SEC?

A Yes, we did.

Q Did you engage the Royal, Kaegel firm to prepare that registration statement?

A The firm, in the actual fact again, most of the preparation of that statement was done in our own office.

Q By whom?

A I was involved in it, Norman was involved. Mainly Norman and I did a great deal of the work on it and other partners were involved because we had a close working relationship.

The firm was involved as a sort of a backstop, checking it because, frankly, they knew very little about

our business, technically speaking, and we prepared the narrative line of the history of the company, the kind of things you need for a prospectus of the company, et cetera.

The firm came in making sure we were in keeping with the legal requirements of the SEC, et cetera.

Q Who at Royal, Kaegel worked with you on the registration statement?

A Directly -- I don't know if he is still there, a lawyer by the name of Grant Anderson. Perhaps another one of his associates.

Q Did Jackson work on the registration statement?

A Directly, no. Though he was in what you might call the high policy meetings in terms of dropping in and seeing everything was going along all right and making sure that we weren't violating any basic conventions or regulations of the SEC.

Q Did there come a time when the firm Chelsea House made a decision to bring in outside directors?

A Well, we did have outside directors earlier than that, Arthur Schlesinger.

Q When did you bring him in?

A I am relying entirely on memory. I would say we brought him in in 1967 or 1968. I am not sure. It

could be 1967.

Q Subsequently did you bring any other outside directors in?

A Well, the late Steve Wise I believe became a director; Mr. Jackson was a director.

Q When did you bring Jackson in?

A I think we would have to rely on the records for that.

Q Was it prior to the time you filed the registrationn statement?

A If he was listed in the registration statement as a director, then it was prior to the time. I just don't know offhand.

Q I show you what has been marked in evidence as Defendant's Exhibit C and ask you if this refreshes your recollection as to when Mr. Jackson became secretary and director of the company?

A Well, certainly if it says so here, I mean since we prepared this, this must be the date or about this date.

Q What is it?

A It says Mr. Stuart Jackson, secretary of the company since June 13, 1969.

Q Did all of the management concur in the selection of Mr. Jackson as secretary and director?

A We were a rather feisty company and we debated a lot of issues and, as I remember correctly, there were some people at one point or another, and I think Oppenheim was one of them, who was opposed to Jackson. But I don't know if it was at that point.

Q Did you have conversations with Oppenheim to the reasons you felt Jackson should become secretary and director?

A I am sure I did.

Q Can you tell the Court what if any reasons you gave Oppenheim?

A Frankly, as a young publisher and young businessman in terms of experience, I was very impressed with that law firm and I felt that we needed a prestigious law firm.

I was impressed with the fact that he agreed to represent us because they had very important and expensive clients and my argument was that the presence of a representative of that law firm on our board could just give us, help to give us the kind of credibility, the kind of sense of belonging if you will, that we would need as a young company, just coming out to the public two or three years after we were formed.

THE COURT: Had you known Mr. Jackson before

you brought that law firm in?

THE WITNESS: No, I never met him before.

Q You expressed those opinions to Mr. Oppenheim?

A Yes, in many ways and times.

Q Did you have any discussion with Mr. Oppenheim as to whether or not management expected Jackson to participate in the daily operations of the company as officer and director?

A My impression now and then --

MR. FLEMING: I object to that, your Honor.

THE COURT: I think what he did is important, not impressions.

Q My question was, did you have any discussions with Mr. Oppenheim about what Jackson's role in the company, the day-to-day operations of the company, were to be?

THE COURT: With whom?

MR. GLASS: Mr. Oppenheim, the defendant.

THE COURT: All right.

A We discussed value and the validity of having that firm representing us. I don't remember any discussion with Jack Oppenheim as to Jackson's role in the day-to-day operations of the company, since it didn't exist as an issue.

Q Was Jackson paid anything for becoming secretary

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or director of the company? Was he given anything of value?

A Well, as I remember at the time it was a touchy thing to become a member of a young company's board because around that time what was in the air was that we --

MR. FLEMING: I move to strike this, and may we have an answer to the question?

THE COURT: Let's get the answer.

Q Will you please tell us whether or not the company gave anything of value, cash or otherwise, to Mr. Jackson in return for his agreeing to become secretary and director of the company?

A Yes.

Q What did you give?

A We didn't give cash, but as I remember we gave ten or twelve or thirteen thousand shares of common stock in Chelsea House.

Q Did the consideration for the issuance of those shares --

MR. FLEMING: I object to the leading form of the question on that issue.

THE COURT: It is leading,but I will take it.

Q Did you pay Mr. Jackson anything as a finder in connection with securing any brokers for a public offering?

A Not that I know of.

Q Did the 12,500 shares have anything to do with the finder's fee?

A Not that I know of.

THE COURT: I wonder why it is not set forth in here.

MR. GLASS: I will come to that right now if I can.

May I have this document marked for identification as Plaintiff's Exhibit 2.

xx (Plaintiff's Exhibit 2 marked for identification.)

Q Mr. Steinberg, I show you what has been marked for identification as Plaintiff's Exhibit 2. You will note that included in this document is something called a preliminary prospectus?

A Right.

Q Also, on page 2-5, which is called Signatures, your name appears, does it not?

A Right.

Q You have signed this in two places?

A Right.

Q I show you what appears to be Part 2 of this registration statement which precedes your signature,

does it?

A Right.

Q And you read this entire document before you signedit?

A I certainly hope so.

Q But you recognize your signature?

A I certainly recognize my signature.

Q I show you what has been marked in evidence as Defendant's Exhibit C. Is this the prospectus which forms part of Plaintiff's Exhibit 2 for identification; isn't that correct?

A Yes, okay.

Q That is correct?

A Yes.

MR. GLASS: I offer this registration statement in evidence. It is part of the registration statement, it consists of the prospectus as well as what we call Part 2, and the reason I am introducing it here in the record is because the description of the Jackson shares is contained in Part 2, and I don't want the Court to feel that we were in any way attempting to mislead the Court.

MR. FLEMING: No objection.

xx (Plaintiff's Exhibit 2 received in evidence.)

MR. GLASS: May I respectfully direct your attention to Part 2, Item 26, which discusses the Jackson shares.

THE COURT: This is what I heard about before. This was with the underwriting fee, finder's fee.

MR. GLASS: That is correct.

THE COURT: Then something happened to change this.

MR. GLASS: That is right.

MR. FLEMING: The S-1 is what is filed with the SEC. The prospectus was being sent to the shareholders.

MR. GLASS: And the registration statement and the prospectus forms part of the registration statement.

Will you mark this as Plaintiff's Exhibit 3 for identification.

xx (Plaintiff's Exhibit 3 marked for identification.)

Q Mr. Steinberg, I show you a document marked Plaintiff's Exhibit 3 for identification.

A Right.

Q Which is dated June 23, 1969.

Again, I direct your attention to this Item 26 of this earlier draft and ask you if you have ever seen it

before?

A Where is that?

Q Right here.

A Yes. I don't remember.

Q The answer is yes?

A I don't remember the exact wording, but this is it.

Q Can you tell the Court what this document represents?

A This is an earlier draft of Plaintiff's Exhibit 2 in evidence.

Q Is Exhibit 3 for identification an earlier draft?

A Let me see what the date is. This is July 25 and that is June 25.

THE COURT: What year?

Q 1969?

A Yes. This is obviously an earlier draft of this.

Q In other words, Plaintiff's Exhibit 3 for identification is an earlier draft of Plaintiff's Exhibit 2 in evidence?

A It definitely appears that way.

MR. GLASS: I offer 3 for identification in evidence.

MR. FLEMING: I have no objection to it.

xx (Plaintiff's Exhibit 3 received in evidence.)

THE COURT: Why don't we take a recess.

(Recess.)

MR. GLASS: I would like to read briefly from Plaintiff's Exhibit 3 in evidence.

Q Mr. Steinberg, I direct your attention to Item 26 of Part 2 of Plaintiff's Exhibit 3 in evidence which you testified was the earlier draft of Exhibit 2.

"On June 30, 1969,the company issued to Messrs. issued to Messers. Stuart A. Jackson, Jeffrey Steinberg, Leon Friedman and Fred S. Israel 12,500, 3000, 2000 and 5939 shares, respectively, of its common stock. Mr. Jackson's shares were issued in consideration for his agreement to become secretary and director of the company."

Now, I would like to read you the later draft which is Plaintiff's Exhibit 2 in evidence under the same section, Item 26, in which it says:

"Mr. Jackson's shares were issued in consideration of his acting as a finder for the company. Mr. Jackson will return such shares to the company."

Can you tell the Court the reason for the change from Exhibit 3 in evidence to which is in Exhibit 2 in evidence?

A The reason for the change in text?

Q Yes, sir, if you know.

A I do remember one thing that might be helpful. As we were approaching completing this document in its various forms and it is a very complicated task, we were working with Grant Anderson to get all the legal proprieties into the text. The question came up I think in Stuart's firm, Jackson's firm, on the propriety of his getting shares from our company, though I had earlier and everybody else earlier agreed to give him the shares. I don't remember the finder personally because that wasn't the issue. The issue was to get him on the board and get a law firm involved. The stock at that time had actually no real market value, though we were hoping it would have. It was in fact almost a token at that time and as we were approaching the final stage of completing the prospectus or the red herring it was called, I remember getting a call close toward the end of the day, like 10 or 11 o'clock at night. These were always done under pressure and deadlines and the thing was to get Stuart's name out of the prospectus and in that context

and because of returning the shares, that was the decision I think that Stuart had come to, Mr.Jackson had come to with his own law firm and it was acceptable to us and there was no reason why we shouldn't do it.

And that was done. The exactwording and why the exact wording I can't recall, but that is what I recall of that situation.

THE COURT: And the shares I take it were returned?

THE WITNESS: Yes, they were returned. The point was made they were returned prior to the actual filing of the prospectus and S-1 or whatever it is.

Q Now, I believe you testified that Mr. Oppenheim was a vice-president and a director of the company?

A Yes, sir.

Q Upon his return from Europe in the spring of 1960 did he work full-time for the company, if you recall?

A Spring of 1960? Was that the first return, do you know, or the second return?

Q I believe Mr. Oppenheim testified that he came back from an extensive stay in Europe in the spring of 1969.

A Because the reason I asked, during the course of his engagement with the company he was in Europe twice.

He came back once. The first time he was not on salary, he just went to Europe with the notion of maybe finding things for us.

The second time he was on salary as a full-time employee of the company in Europe and was on the staff of the company.

I don't know about his hours, but I presume it was more or less full-time.

Q What was his job at the company?

A I could fairly say that it was anything he wanted it to be.

Q Did he have anything to do with the day-to-day management of the company?

A In the sense of his being a gad fly.

Q Did he participate in management discussions with respect to policy?

A Yes.

Q Were those management discussions on a formal or an informal basis?

A Mostly they were in the course of the day's activities, so I would call them informal.

Q Did the company ever have any formal meetings of the board of directors?

A I am sure we did, but not many. I can't say

offhand.

Q To your knowledge did Jackson ever attend any board of directors' meetings after he became a director in June of 1969, after the registration was filed?

A After the registration was filed? I couldn't say.I don't remember Jackson's presence at meetings, but he might have been there. That is a matter of record.

THE COURT: Do you have the minutes of the board of directors?

MR. GLASS: Not today, your Honor.

Will you stipulate there were no formal meetings and Jackson did not in fact attend any meetings based upon the testimony of Mr. Oppenheim?

MR. FLEMING: I just don't know. If that is the fact I will stipulate with you. May I have the afternoon to find out?

THE COURT: There are none?

MR. FLEMING: If there are I believe they would be with the Roger Wells firm.

MR. GLASS: I so represent and we will make them available tomorrow.

Q Did Mr. Jackson after he became secretary and director of the company, have anything to do with the day-to-day management of the company?

A No.

Q What was Jackson's function, if any, with Chelsea House?

A The fact is that the firm of Royal, Koegel & Wells would delegate to us when needed an attorney such as Grant Anderson and others whose names slip my mind, and when we needed more specific situations such as the underwriting, they would work with us.

In terms of Stuart Jackson himself, occasionally I would go to lunch with him, talked to him on the phone; very broad matters, and I can't even think of specific matters as such.

One specific matter was the fact that Jack Oppenheim wanted to sell his stock, which is one thing I recall.

Q Is it your testimony, Mr. Steinberg, that you had conversations with Mr. Jackson with respect to Oppenheim's desire to sell his stock?

A Definitely, yes.

Q Do you recall when that conversation took place?

A I recall the place but not the exact time. I suspect by reconstruction backwards, the early part of 1970.

Q Would it refresh your recollection if I told you

it was in approximately the last week of March of 1970?

A It could be. I remember calling him well after hours from my home; it was then in Manhattan, and telling him that Jack Oppenheim in a memo to me resigned his post, really unexpectedly. I found it at lunch, found the memo on my desk.

Q Was Jackson aware of his resignation when you talked to him?

A I don't think so. I must say that Jackson just wasn't -- we weren't one of his major clients, let us put it that way, and it wasn't one of his major concerns, and I personally felt almost to a degree, I shouldn't necessarily impose too much on his time. He was out of town most of the time, et cetera.

Q Getting back to your conversation with Jackson, what did you say to Jackson if you recall?

A As I remember it, the burden of what I said was that Jack Oppheim wanted to sell out. There was a negotiation going on, under way. I think there was a price. I told him there was 140 or 150,000 shares involved, and since this is a kind of major event in a small, privately-held company, what legal problems were involved? What do we do now? If we did buy him out because it wasn't a fait accompli at the time, it

was a process of negotiation that went on, as I remember, for several weeks.

Q Did you say anything else?

A To Jackson? Well --

Q Specifically, did you --

MR. FLEMING: I object to that.

A Just let me think if I may for a moment to recall what the nature of the conversation was if I could.

MR. FLEMING: I object to the leading with respect to this conversation.

THE COURT: All right, we had a certain amount of leading. I will wait for the answer to the question.

A To add to that, I said that I was acquiring X thousand of shares and that Andy Norman was acquiring some more and other people who are interested and whether at that moment I said, "Are you interested in it, Stuart, or not, but what happens?" That is why I am having difficulty recalling. It came to pass, however, that Stuart was going to acquire the same amount of shares that I acquired.

Q What did Stuart say to you, if you recall, in that conversation, Mr. Jackson?

A What strikes me about that conversation that is interesting now as I recall it is that it was rather

almost casual but in the quite rapid hustle-bustle I said things are going along fine. I was buying the shares and half a dozen other people might be buying. I don't know what numbers were involved at that moment.

Stuart said, "Put me down for the same amount you are taking."

Q Did you mention to Jackson when he asked how business was the existence of the Oppenheim memo which is marked in evidence as Plaintiff's Exhibit 1?

A No, sir.

Q Did you ever discuss Plaintiff's Exhibit 1, the Oppenheim memo, with Grant Anderson prior to Mr. Jackson's purchase of the shares?

A Not that I remember.

Q Do you recall whether anything else was said by Mr. Jackson with respect to his inquiry concerning the business of the company on that discussion?

A Except for the fact that I told him how much I was acquiring and what Andy was doing and the nature of the business generally and his interest in acquiring the same amount of shares as I did. That was about the total conversation.

Q Taking you back to January, February and March, did you have any discussions or meetings with Mr. Jackson

in January of 1970 that you recall?

A January, 1970? Nothing stands out in my mind. We may have gone to lunch, but I don't remember any particular meeeting.

Q Do ylu recall whether during this period of January through March, before you called Mr. Jackson about the Oppenheim sale, you discussed business with him at all, or the business of the company?

A As far as I know, as far as I can remember, I never burdened Stuart Jackson with the details of the daily business, what books we published, what deals we were making.

I may have said something like the history machine is completed, which is program we had of 50 films, but that is the kind of thing I might tell Stuart Jackson.

But there just wasn't this kind of time and that kind of relationship.

Q Did Jackson ever inquire from you during this period as to how business was?

A The same thing, how is business.

Q What was your response, if you recall?

A Well, in that period I was optimistic, I must say. I was hopeful about the company. I thought it was doing well. We had many irons in the fire and they were all

promising.

Q Did you communicate this to Jackson?

A In one way or another, yes.

Q Let me ask you this question: there has been testimony that in the early part of January, prior to the publication of the Price Waterhouse audit for the fiscal year ending October 31, 1969, Price Waterhouse reported the pencilled figures showing a loss for the yearend of $30,000.

Did Mr. Oppenheim to your knowledge have any discussions with Price Waterhouse with respect to those pencilled figures?

A Yes.

Q Were you present?

A Well, he told me about them and I was in the office but I wasn't at the exact discussion.

Q What did Mr. Oppenheim tell you, if you recall?

A At a subsequent period he told me that he was surprised by the fact that after a week-end of discussion and negotiation with Price Waterhouse in which Norman and I were present at, that we came out with a $30,000 loss. Because he had a discussion with the Price Waterhouse people the Thursday or Friday before that there would be a net profit of anywhere -- I don't think they were specific,

a high two figures or approximately five or six figures -- fifty to one hundred thousand dollars. I don't know if they were specific about that.

But he told me he left the meeting on Friday with the Price Waterhouse people in which he was very optimistic about what was happening and was alternately shocked or surprised by the reported loss as $30,000.

Q Did he make any comments as to what he thought the reasons were for the loss?

A Subsequent to that, and I don't know exactly when, but it did come up many times. He made the point to me and to Andy Norman that there might have been some kind of hanky-panky here motivated by the fact that Mr. Norman was a conservative person in point of view in fiscal matters, was not prepared at that time to have the company go public and, therefore, since there is latitude even in accepted accounting procedures for treating certain data the most conservative point of view was adopted which might have accounted for the $30,000 loss rather than about fifty or sixty thousand dollars gain, against the value of such things as contracts that were in preparation and for which one might take percentages of completion.

And certain charges to overhead rather than to making something as an asset and extending it out. There

are always options along the way in complicated accounting procedures.

Q In view of that let me ask you this question: after the receipt of the information concerning the fact that Chelsea House had a $30,000 loss for fiscal 1969, did you continue to be optimistic about the future prospects of your company?

A Oh, definitely.

Q Did you convey this optimism to others?

A I must have.

Q How about Mr. Jackson?

A I didn't convey any pessimism to him.

Q Was Oppenheim aware of the fact that you were continually optimistic about the prospects of the company after the publication of the October 30, 1969, Price Waterhouse report?

A I can't testify to Oppenheim's awareness but I think he knew I was of an optimistic bent.

Q Did you thereafter convey this optimism or pessimism with respect to the prospects of the company following your receipt of the Price Waterhouse audit?

A Definitely not. I wasn't even pessimistic in the bankruptcy period. I thought we would come out of it.

Q In connection with Mr. Jackson's discussions with you with respect to the underwriting following the receipt --

A Will you say that again?

Q In connection with your discussions with Mr. Jackson concerning the underwriting following the receipt of the October 31 figures, did you still desire to go forward with the underwriting?

A Definitely.

Q Did you still feel that you had a viable company?

A Definitely.

Q And did you convey that to Mr. Jackson?

A I think so.

Q The Oppenheim memorandum, Plaintiff's Exhibit 1 in evidence, discusses the question of the trade books as opposed to the milti-volume presentations.

Did you ever in the spring of 1969 communicate to Mr. Jackson any information concerning -- the spring of 1970 I mean -- a possible imbalance of payments against sales in connection with Random House?

A No, sir.

Q When did you first learn or did you first learn that the Random House trade books sales in fact were not going as well as the company had anticipated?

A We always like them to go better than they do except in the case of a runaway best seller. But in May of 1970 Random House was getting -- it could have been late April -- was getting nervous about some of the advances they had given to us and they called us in but, nevertheless, gave us some additional advances.

They indicated to us that we should complete as quickly as possible the books that they had given us advances for, which is a process in the trade were a distributor, which Random House was, gives small publishers advances to complete books which the distributor then sells and takes a percentage of it. They were on-going in that process with us.

In the book business some books do well and some books do poorly and some books bomb out despite the expectations of the publisher. Every publisher has this experience.

Q For the first quarter of 1970, January, February, March, when did you get the report of Random House concerning what had happened -- did you get an official written report?

A I don't know the date, but there was always a computer breakdown or it gave out the wrong information. Computers aren't as reliable as their reputation has them.

Q Had you gotten that report prior to April 10 for the period ending March 31?

A I don't recall.

Q Now, prior to April 10 what was your feeling about the possible success or failure of the Random House Christmas list?

A Let me just say something in this context, this may help. The trade business was a small part of our business, the Random House trade business. We got into it more or less by accident because of the success of our Sears, Roebuck catalog which was a runaway best seller and after that experience Random House kept asking for more and more books and supplying us with large fiscal advances. They thought we could no wrong.

In the short term both of us seemed to be wrong. In July, 1970, we sent into Chapter 11. In the long term all the books we did with Random House sold out.

Q Prior to April 10, 1970, were you optimistic about the success of the Christmas list?

A Prior to April 10?

Q Yes.

A I certainly was in December and January because we were asked to reprint, as far as I remember, at least one book.

Q Which one?

A The Adventures of Buck Rogers.

Q That is a 25,000 printout?

A There was --

Q A reprint?

A We were invited by Random House I think in November or early December to attend a sales meeting in Puerto Rico and we were told there that the Buck Rogers book was doing amazingly well, selling at a faster rate than their other books.

And Fred Israel came with me, we called the States and put in a Random House request to put in a reprint order for the Buck Rogers book because it seemed to be doing so well. At this point I was optimistic.

Q How about February and March of 1970?

A Well, by February I would say -- or March -- although we had no formal reports, we talked to some of the people by telephone -- there were some 35,000 distribution outlets -- and you get a confusion of reports at the early stages unless in the case of a book that is really selling very well and everybody knows it fairly quickly.

But if a book is in the middle range you just don't know. There are too many elements to know. Book-

stores don't return books for nine months.

Q Is it fair to say that in February and March of 1970 you in fact indicated a change in your optimistic feeling about Random House?

A My feeling about the company was not necessarily based on only trade operations which I pointed out was a later development. It was more based on the program we called the history machine which was 50 films on American history, which is now quite a decent seller and was just completed, to sell very heavily for the school market.

Q Was this discussed with Jackson, this history machine?

A He may have known about its existence. I don't know if he knew the details of the sale. We had just completed the machine. We had a very important man from McGraw-Hill.

Q By March of 1970?

A About March, February or March we hired him March and April.

Q Let me ask you about the policy of your company: did you prepare monthly financial statements, balance sheets, profit and loss statements?

A Nobody in the company did, no.

Q So there were none available in January, February and March of 1970?

A Not that I know of.

Q Did you prepare a monthly cash flow statement?

A Not normally. Normally Andy Norman and I would sit down and work out what we expected in cash and what we had to spend. But it wasn't a cash flow statement in the sense an accountant does it.

Q Did you ever discuss this with Mr. Jackson?

A No.

Q Was this an internal thing?

A Definitely.

Q Were formal or informal financial reports ever submitted to the directors of the company on an interim basis?

A Well, we have talked about the Price Waterhouse report.

Q Other than the Price Waterhouse report.

A Informal -- formal, not that I know except for those annual audits, but informally, nothing as far as I know that was either significant or semi-official.

Q Were any written communications during the period of January, February and March, up to April 10, 1970, ever submitted to Mr. Jackson or any other member

of the board of directors with respect to the status of the company or its progress?

A Unless the files have some such thing, I don't remember.

Q You don't know of any?

A Not offhand.

MR. GLASS: May I have a moment, your Honor?

(Pause.)

Q I believe you testified there would be formal meetings that took place. Was the information that you and Mr. Norman had about the company discussed at these informal meetings?

A Yes.

Q Was Mr. Oppenheim present at these meetings?

A Sometimes.

Q Was there any effort made to withhold information?

A From Oppenheim?

Q Yes.

A Not that I know of.

Q Do you know whether your company kept its books on a cash or an accrual basis?

A I think our accountants would have to answer that. I think they were on an accrual basis, but I am

not sure. I just couldn't answer that.

MR. GLASS: I have nothing further at this time, your Honor.

CROSS EXAMINATION

BY MR. FLEMING:

Q You testified, Mr. Steinberg, that the firm of Royal, Koegel had been retained because the company felt the need for a law firm of some prestige?

A Yes.

Q Am I correct that prior to retaining the Royal, Koegel firm your lawyers were the Paul Weiss, Rifkind firm?

A Yes, briefly.

Q How long was the Paul Weiss firm the attorneys for Chelsea House?

A I couldn't say exactly,but my impression is that perhaps six months, give or take a few months either way. Certainly under a year, I think, but don't hold me to this.

Q Was the change made to the Royal, Koegel firm because the Paul Weiss firm was not sufficiently prestigious?

A The change was made at the time --

Q Answer the question yes or no, was the change made for this reason, because the Paul Weiss firm was not of sufficient prestige?

A Correct.The Paul Weiss firm was billing Chelsea House monthly, they were billing us too frequently for my liking, whether monthly or daily, but the bills were coming in rapidly and with a bit of rapacity and we couldn't put up with it.

Q Rapacity is another word for --

A Avaricious.

Q You felt the bills were unfair?

A I don't know, but they were certainly too frequent.

Q One of the reasons you changed from or retained the Royal, Koegel firm was that the Paul Weiss billing had been too frequent?

A That is true.

Q And not that it was not a sufficiently prestigious firm?

A That is true.

Q Am I correct that you were introduced to Mr. Jackson by your son Jeffrey Steinberg; yes or no?

A That is one of those questions that is partially true.

Q Tell me which part is correct.

A I was introduced to Stuart Jackson by Jeffrey and the late Steve Wise, but primarily Steve Wise.

Q Am I correct that Steve Wise had been a client of Mr. Jackson and had taken Jeffrey to meet Jackson, is that correct?

A I presume that to be true.

Q Were you told that to be true?

A Probably, yes.

Q Were you told that -- Mr. Jeffrey Steinberg is your son, by the way?

A That is true, not by the way. He is actually.

Q Jeffrey Steinberg was deliberately your son?

A Definitely, still is. It is a wise child that knows its own father.

Q Mr. Wise prior to your retaining the Royal, Koegel firm was a client of Mr. Jackson?

A That was my understanding.

Q And Mr. Wise introduced your son to Mr. Jackson?

A I think so.

Q And you were told there was some discussion at that meeting of a possibility of Mr. Jackson being able to find an investment banking firm for the purposes of underwriting Chelsea House stock?

A Stephen Wise was great devotee of going public.

Q My question was, if I may, were you told that the meeting which Jeffrey Steinberg was introduced to Mr.

Jackson, there was some discussion as to whether Mr. Jackson would be able to obtain an investment banking firm to underwrite a public issue of Chelsea House stock?

A It is conceivable I was, but I don't remember specifically being told that.

Q Do you recall when you first met Mr. Jackson?

A Yes.

Q Approximately when was that, could you fix a date?

A I would have to reconstruct it. I would say it would have to be somewhere in -- would be somewhere in the middle or early 1969.

Q Where did that meeting take place?

A I believe I met Mr. Jackson first in his office.

Q Was there any discussion at that first meeting of Mr. Jackson using his efforts to obtain an investment banking firm to underwrite stock?

A As I remember, that was a very brief meeting and that doesn't stand out in my mind as such.

Q Was there any discussion about billing, yes or no, that is legal fee billing?

A No. I don't remember any discussion.

Q Did you complain to Mr. Jackson about the frequency of the Paul Weiss bills?

A If I did it was just by-talk but it wasn't a major

issue at the time.

Q Prior to obtaining the Royal, Koegel firm was it agreed that Mr. Jackson would seek an underwriter for Chelsea House?

A I don't think that was a condition of the retainer.

Q The answer is no?

A It was not a condition of the retainer.

Q Was it agreed that no bills would be forwarded for legal services until the underwriter was obtained?

A No.

Q Were you billed at any time by Royal, Koegel?

A I don't have an impression of being heavily billed similar to the impression I had about Paul Weiss.

Q Were you ever billed?

A We must have been.

Q Do you have any recollection of being billed?

A We paid some fees I am sure, but I don't remember specifically. We got an awful lot of bills.

Q Can you estimate their amount?

A Of the bills? Over which period?

Q From the original retainer of the firm until bankruptcy.

A Through bankruptcy or --

Q Until bankruptcy.

A I couldn't estimate that. I do know a bankruptcy figure I think.

Q I do, too.

A That one I remember.

Q Can you estimate the bills paid between the period of the retainer and the bankruptcy?

A Through the bankruptcy?

Q Until the bankruptcy.

A No, I couldn't, I am sorry.

Q Am I correct that Price Waterhouse was recommended by Mr. Jackson?

A I heard this in the courtroom, but I don't remember it that way. We went to several other firms, large firms, Andersen & Company I think was one of them.

He may have recommended them but we were looking for a major accounting firm and Mr. Jackson may have made that specific contact, though we didn't work it out with Andersen & Company and finally we worked it out with Price Waterhouse.

Q Were you advised by anyone it would be to your advantage to have a big A firm doing your accounting?

A I knew it on my own.

Q Anyone advise you of that?

A As such? I think I was the initiator of that idea in my company.

Q Was that directly related to the intention to make a public offering of the stock?

A I think so, yes.

Q There was a need for a prestigious law firm and --

A And a prestigious accounting firm.

Q Preferably one of the big A?

A I don't know if they called them one of the big A.

Q But you have no recollection of who directed you to Price Waterhouse?

A Specifically, no. I don't, specifically. It might have been Mr.Jackson, but I don't recall that event as such.

Q But you don't remember it?

A That is right.

Q You testified that you and Mr. Norman wrote the prospectus. Let me show you Exhibit C, the prospectus.

A Yes.

Q Did you testify that you and Mr. Norman together wrote a substantial portion of this document?

A I believe I testified that we wrote the narrative line and the legal aspects, the history of the company, its nature of business and the legal aspects were prepared by

Grant Anderson, the requirements of the SEC, et cetera.

Q This is page 3, the three paragraphs, did you and Mr. Norman write that?

A I would suspect as I remember now I wrote most of that, I think. Maybe Mr. Norman did some editing on it but I believe I wrote it.

Q The introductory statement, the paragraphs appearing thereunder, did you and Mr. Norman write that?

A As I remember I did, yes.

Q For example, paragraph No. 3, the company is expanding its business in several new fields of operation, et cetera?

A I wrote that with the advice of Grant Anderson and possibly the brokerage because that was a form or convention expected for this kind of thing where we don't make any far-fetched claims without modifying them.

I think this is referred to in the SEC as the chamber of horrors where you tell all the bad things or some of the bad possibilities of the company to warn possible stock purchasers.

Q My question is did you write this or did the lawyers write it?

A It was I believe written at the suggestion of the lawyers. It was not one of the either or situations.

Q The lawyers told you to do what?

A Well, our adviser for most of that was Grant Anderson.

Q What did he tell you to write, all the horrors?

A No, that we cannot make any --

There is no assurance that such government subsidies will continue in the future. That certainly is not to be taken for granted and they didn't continue in the future. The point of the sentence was to warn prospective stock purchasers, to make the disclosure that the government subsidity to educational institutions will not continue at that rate or level, they had been going up in 1967 and 1968 and when Mr. Nixon became President in 1969 they went down.

Q Paragraph No. 6, one of the company's publications, the 1896 Sears, Roebuck catalog, there is no assurance that the book will continue to sell in the future. Did you write that?

A Yes.

Q Was it your language?

A That is some of the lawyers' suggestions. The basic idea is the lawyers' notion because I had no knowledge of writing the prospectus. That is to tell the prospective stockholders that even though we are doing well at this moment there is no assurance that we are going to continue to do

well,and this is pro forma, warnings to this effect.

Q Use of the proceeds, page 3, did you write that?

A Yes, I could have, definitely.

Q Page 8, business, did you write that?

A Let me just look at it for a moment. Yes, I wrote the main burden of it. It may have been edited by the lawyer or Grant or by Norman.

Q Mr. Steinberg, what I am trying to determine is whether you sat down and wrote it or sat down with the lawyers and together, knowing what was necessary in terms of the prospectus, you just did the writing?

A The answer is both, Mr. Fleming. I sat down and wrote a prospectus and the lawyers looked at it and we worked with Anderson with Norman editing like any written document in a publishing house.

Q Did the lawyers question you whether the statements or that statement was completely true or absolutely accurate, ask you questions of that sort?

A Yes.

Q And talking about your representations?

A Well, to what extent I don't know, but they certainly questioned me on some of it.

Q Talking about this conversation with you and

Norman, did the lawyers question you about the representations in this prospectus?

A The lawyers, that is part of the process, the lawyers familiarize themselves with what I tell them and --

Q Did they ask you to support what you were telling them?

A In a sense, certainly.

Q They satisfied themselves that the representations made in the prospectus were fair and accurate?

A I certainly hope so. We were counting on them to do that.

Q That is what they were attempting to do with you in this conversation?

A Yes.

Q When they suggested revisions you would revise them?

A Yes, if I thought it was necessary, yes.

Q If they told you to do it, that it was necessary, would you revise it?

A I would discuss it with them. If I thought it wasn't the right emphasis or the particular proposition they were setting forth, we had many discussions and some things that just didn't go and some things we suggested to do.

Q And those would be compromised and the result would be written --

MR. GLASS: I don't think it is clear, but can we fix a date for these conversations with the sttorneys?

Q This is the summer of 1969, I assume?

A If that is when this came out, whenever we did it. This is July.

MR. GLASS: July 29, 1969.

A This is a process that went on, offhand, two months or five weeks or three weeks, in that area.

Q Probably the months of June and July, 1969, would that be fair?

A It may be.

Q An extended period of time?

A Some period of time.

Q What I am trying to find out is when you say you wrote this, whether you mean you composed it in the sense you wrote it down but were working with the lawyers while doing it?

A Yes, that is true.

Q I assume the lawyers were riding herd on you?

A Both, riding herd on each other.

Q Testing each other's representations, is that correct?

A Right.

Q Attempting to make a factual disclosure about the business and plans of this company?

A Exactly.

Q Those lawyers were associates of the Royal, Koegel office?

A You say lawyers. As I remember, it was just Grant Anderson almost entirely.

Q Did you review this with Mr. Jackson?

A I don't know if I personally reviewed it with Mr. Jackson. I don't know if Grant Anderson did, but I think he was familiar with it, yes, he should have been.

Q Did Mr. Jackson ever discuss it with you?

A Not in detail, definitely not.

Q In any form did he discuss it with you?

A As to the substance,it is hard toremember a discussion on the substance of this prospectus with Jackson.

Q The 12,500 shares, you said there was a change in Part 2 as a result of a communication to you by Mr. Jackson, is that correct?

A Either Jackson or Anderson, but it came as I remember late at night. In other words, some kind of deadline, whether a printing deadline or a submission deadline to the SEC and the point was that that had to be changed,

add a bit of nuances because we had already gone along up to the point and we changed it, of course.

Q The first draft represents that the shares were being given to Mr. Jackson as secretary, is that correct?

A That is right.

Q And the second draft represents that the shares were given to Mr. Jackson as a finder's fee but then returned to it?

A That is what it says, yes.

Q Which in fact was the case, were the shares given to Mr. Jackson for a finder's fee?

A My impression they were given as secretary, but the finder's aspect --

Q What is the answer to the question?

A As a member of the board.

Q Was it your impression that they were given to Jackson as secretary?

A Member of the board, not necessarily secretary.

Q And member of the board. Can you tell us why in the second draft this states they were given as finder?

A That is one of those I think little accidents of history where something has to be done quickly and this was about 11 at night and there was printing and we had to find some way of changing that, and I didn't think of it

that way, but somebody did and I am not sure who it was and the shares were returned and that clause was put in the prospectus.

Q You say the shares were returned. Were they returned to you?

A Not to me personally, no, but Royal, Koegel firm was the repository for my shares and other people's shares, and I was told they were given back.

Q Who told you that?

A Grant Anderson.

Q You also characterized Mr. Oppenheim as a gad fly in the management of company. Do you recall that testimony?

A Yes.

Q What do you mean by gad fly in that context?

A What context? In the accepted meaning of gad fly or do you want to know any other meanings?

Q The meaning with which you used the word.

A A gad fly is somebody who or something who is annoying, persistent, sometimes volatile, repetitive, hyper-critical.

Q Mr. Oppenheim was all of these as far as he participated in the management of the company, is that a fair statement?

A I think yes.

Q That was for the period of time prior to the buying out of Mr. Oppenheim?

A From time to time, yes. Certainly not when he was in Paris that much.

Q He didn't bother you when he was in Paris?

A Except he did.

Q He did? Even from Paris?

A Yes.

Q Did you ever tell Mr. Jackson that Mr. Jack Oppenheim was a sort of a gad fly?

A I might have.

Q Did you ever complain about Jack Oppenheim being a pain in the neck?

A That wasn't the nature of our relationship.

Q It was or was not?

A It was not.

Q My question is, did you ever tell him that?

A It is hard to say I put it that way. I might have said something to this effect when I told him that Jack was selling his shares.

Q Who suggested the buy-out of the Oppenheim shares?

A That is a very good question.

Q Do you have any recollection who did?

A Yes, I have some.

At one point Jack Oppenheim suggested the buy-out of his shares to my partner Andy Norman and he refused.

Q That is, you were told that Oppenheim offered his shares to Norman and Norman refused them?

A Right.

Q When was this?

A Early 1970, between January-February.

Q January of 1970?

A Possibly.

Q When were you first brought into the plant to buy out Jack Oppenheim?

A To go back to your earlier question, I can't tell you who suggested the buy-out. But subsequent to the buy-out Jack made it clear that from this moment he had to shoot his way out of the company because he wasn't getting the fair treatment he felt he should get.

Q Do you recall who suggested the buy-out of Jack Oppenheim?

A I am trying to do this retrospectively.

Q Can you do it back to the time, can you recall who did it?

A My notion is that Jack did it. I would think

Jack did it.

Q Could you explain why Norman and you, Steinberg, paid Poten a commission on the sale?

A I am not aware of paying a commission for the purpose of the stock option. But there may be a written document on that so we can satisfy this question. Poten was an intermediary. The conditions became so volatile between Jack and the rest of the company that everybody agreed that if that was to happen at all it could not be a vis-a-vis business but had to be through an intermediary, who turned out to be Poten, who was a nice fellow, who worked for the company and seemed to be objective and cool about everything and he would go from Jack to us and say Jack wants this many shares and this is the deal and thisis the relationship. He wanted the no competition clause.

Q Mr. Steinberg, did you and Mr. Norman authorize Mr. Poten to go to Mr. Oppenheim and offer to buy out his stock?

A Authorize him implies that we had directed him to do so and act as our agent. We didn't. He was an intermediary rather than an agent and I know the import and I am aware of the difference in nuances, of that difference. He would just collect information from both sides and come to us with an offering and counter-

offerings and that is how it was handled. We didn't authorize him to buy out the stock.

Q The first time Poten acted as an intermediary who were the people who were interested in purchasing the stock?

A Norman, myself, I believe there was Harold Harris, the sales manager we hired from McGraw-Hill. There may have been Steve Wise, but I am not sure about that at that time. I don't know fiscally potent Steve was at that point. That is about it. The other people sort of came in later.

Q What was the division to be?

A Since Norman possibly had the most money he was to get the lion's share.

THE COURT: What were the shares that you were taking?

THE WITNESS: I was to get I think about 10,000 shares, if I remember correctly, which is what I gotand paid for as per agreement.

Q Was Norman to buy the rest?

A Not entirely. Other people came in.

Q I am talking about originally.

A That I may say was a process changing daily.

Q But I am talking about the original group which

offered to buy out Oppenheim. I believe you testified it consisted of you, Steinberg, Norman and perhaps Harold Harris and maybe Steve Wise, is that correct?

A Right.

Q If I may ask it at least another way, what was the participation of each of them?

A Without fixing it specifically because I was to get as much as I could afford, which wasn't much, and Norman was to get the lion's share. That wasn't specified.

Q Am I correct at that time, as of that time, Norman had already read the famous Oppenheim memorandum?

A I can't tell you what he read. I really can't say, I don't know.

Q He had discussed that with you?

A Not as far as I know, funny enough. I never read the memorandum, incidentally, because it is a matter of record.

Q Did you see it?

A I saw that memo about a month ago at another pre-trial deposition, if that is what you call it, but I didn't completely recall.

Q I am talking about seeing it.

A I didn't see or read it.

Q Was it in your box?

A I don't have a box, but it wasn't there if I did.

Q Did you discuss it with Norman, Israel and Friedman?

A At this point I don't know the date of that memorandum. What was it dated?

Q It was not dated.

A When is it supposed to have come out, do you know that?

Q My question is at the time that you agreed originally to participate in the purchase of the Oppenheim shares, had you discussed the memo with either Norman, Israel or Friedman?

A What I am trying to establish is the date of that memorandum so I will know if it is conceivably possible, or some instance when it came out.

Q Do you recall the date when you agreed to purchase the stock originally?

A No, that wasn't one day in time. It was an on-going process.

Q Do you recall the stock sale closed on April 10, 1970?

A That is what I understand, a Friday.

Q How long prior to April 10, 1970, did you,

Norman and Harris and possibly Wise decide to buy out Oppenheim?

A My estimate is that that process was going on probably about four to six weeks, as I remember it.

Q That takes it back to the 1st of March.

A If that is the date there. Oppenheim resigned on a certain date and the discussion of his sale of stock came after that date.

Q If I tell you that Oppenheim resigned effective March 6, would that refresh your recollection as to when you first decided to buy the stock?

A Well, the discussion and the going back and forth must have happened shortly thereafter, a week or two thereafter or something to that effect. A week after.

Q Do you recall the time you, Norman and possibly Harris and possibly Wise through Poten offered to buy out Oppenheim?

A The first time?

Q Yes.

A No, I don't recall.

Q Do you recall if at that time you had discussed the Oppenheim memorandum with Norman, Friedman or Mr. Israel?

A I recall discussing the memorandum with Fred Israel, since I had known Jack to be a gad fly, as I

testified there, I felt there would be nothing new in the memorandum and I wasn't interested in reading it.

Q Had you discussed it with Norman?

A I don't recall discussing it with Norman.

Q Am I correct you saw nothing new in what Israel related to you which you had already heard from Oppenheim?

A By then I came to discount generally what he was saying.

Q What Israel related to you had been the subject of conversation with Oppenheim in the past?

A Various points, yes.

THE COURT: We will have to adjourn now. Would this be a good time?

MR. FLEMING: Yes, sir.

THE COURT: It will have to be at 10.30 tomorrow, gentlemen.

(Adjourned to September 11, 1974, at 10.30 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Jack Oppenheim	8	102	110	
Harold Steinberg	113	148		

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
1	49	50
2	124	125
3	126	128
Defendant		
A	102	103
B	102	103
C	102	103

Copy received
Nov. 3, 1975
Curtis, Mallet-Prevost,
Colt & Mosle